

Volume 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Nathanael M. Cousins, Magistrate Judge

DARYELLE LAWANNA PRESTON,

Plaintiff,

VS.

NO. C 14-02022 NC

CITY OF OAKLAND; DEANNA SANTANA,
in her individual capacity;
and DOES 1 through 10, inclusive,

Defendants.

San Francisco, California
Monday, September 14, 2015

PARTIAL TRANSCRIPT OF PROCEEDINGS

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Monday - September 14, 2015

12:53 p.m.

P R O C E E D I N G S

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(Jury selection and instructions reported but not transcribed.)

(Proceedings were heard out of presence of the jury:)

THE COURT: Welcome back. Please be seated. Our jurors are assembled and ready to return. Any further issues before we bring them in?

MR. SIEGEL: Not for the plaintiff, Your Honor.

MR. LAFAYETTE: No, your Honor.

THE COURT: All right. Let's bring them in.

(pause in proceedings.)

(Proceedings were heard in the presence of the jury:)

THE COURT: All right. Welcome to our jurors. Everyone else can be seated.

And as promised, we will start with the opening statements, and plaintiff may proceed.

MR. SIEGEL: Thank you, Your Honor.

OPENING STATEMENT

MR. SIEGEL: Good afternoon. I hope everyone had a good lunch.

You may think this, without even hearing the evidence, but Oakland City Hall is a pretty tough place to work, a location where people are very competitive. There's lots of sharp elbows, if you want to put it that way. You have business

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1 people and developers who are looking for business; you have
2 labor unions looking for better contracts; you have politicians
3 who are looking for influence; you have community groups; you
4 have groups based on racial and ethnic groups, and it's a tough
5 place to work.

6 Lawanna Preston was hired to make sure that people follow
7 the rules. She was hired in 2007 to be in charge of labor
8 relations, meaning it was her job to negotiate with the unions
9 who represent the City employees to handle grievances, that is
10 complaints, that the unions would make in which they claim
11 there's a violation of the contract. She was in charge of
12 investigating employees who were accused of bad conduct,
13 misconduct.

14 The person who hired her was a city administrator by the
15 name of Deborah Edgerly. And in Oakland, the City
16 Administrator's job is the top job. That's the top-appointed
17 person, the person who is in charge of running the Government
18 on a day-by-day basis. I'm not talking about the elected
19 leaders like the mayor or City Council members, and so on, but
20 the City Administrator was the top person. And when Deborah
21 Edgerly hired Ms. Preston, she told her very candidly that
22 things were a mess, that people did what they want, that they
23 didn't follow the rules, that things were chaotic. There were
24 lots of problems, and she essentially appointed Lawanna Preston
25 to be the new sheriff in town to make sure that things got

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1 straightened out. And what you will hear is that Lawanna
2 Preston did exactly that. She brought order to labor relations
3 by being fair to both sides. She made sure that employees were
4 disciplined if they engaged in misconduct.

5 One of the things that she found when she started work was
6 that in the City's corporations yard -- and if you don't know
7 what that is, corporations yard is where maintenance employees
8 and other civil employees reported for work and where the City
9 trucks and other vehicles that they used were maintained. She
10 learned that about 3:00 o'clock in the afternoon people stopped
11 working in the corporations yard and started to drink, and that
12 some people opened the trunks of their cars and there were full
13 bars inside, and this is one of the issues that she addressed.
14 Because she did her job the way she was hired to do, Lawanna
15 Preston was fired.

16 Now, before I go into the facts of the case in greater
17 detail, I just want to emphasize very briefly what Judge
18 Cousins said earlier, which is that we have two claims in this
19 case. They're both retaliation claims. One is under the First
20 Amendment to the United States Constitution, the other is under
21 California Labor Code Section known as 1102.5. But there's a
22 lot of overlap between the two. The First Amendment claim is
23 brought only against the City Administrator who fired
24 Ms. Preston, Deanna Santana, who is here in court, who a couple
25 of -- after a couple of interim people, was the person who

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1 assumed the job that Deborah Edgerly had had.

2 And the First Amendment claim basically is that Lawanna
3 Preston stepped out of her role as an employee and raised
4 issues about the way in which some things were being run in
5 city government, and she did so because either these were
6 matters of public concern or she skipped over her direct
7 supervisor to tell the public or elected politicians about
8 these problems, or basically raised things that were not simply
9 part of her job. And I'll explain that later.

10 And then the Labor Code is similar, but doesn't require
11 that she step out of her job, even if a person in their job
12 reports on misconduct, violations of state or federal law, or
13 other types of corruption, they are safe from retaliation. And
14 Judge Cousins explained some of these things already, and he'll
15 give you more detailed instructions at the end of the trial to
16 help you evaluate the evidence and make your decision.

17 Now, as I mentioned, Ms. Preston was hired in July of
18 2007. Before that, she had really worked her way up from kind
19 of the bottom of the totem pole. She started out her career
20 working in stores. She became a parking enforcement officer
21 for the City of Berkeley, then became the supervisor, and then
22 went to work for the Service Employees International Union,
23 which is a very large union. It represents a lot of public
24 employees, actually, all over the United States, and she rose
25 in that job from being a field representative to ultimately

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1 being the person in charge of the SEIU's operations in San
2 Francisco and also its political director.

3 But in 2007, as I mentioned, some people would say, well
4 she switched sides from the Union side to the management side.
5 But what she will tell you is that what she was interested in
6 was the whole process of labor relations and doing a good job
7 as a labor relations representative. She felt she could do it
8 for the Union or she could do it for the City of Oakland, and
9 Deborah Edgerly, as I mentioned, hired her.

10 Things went very, very well for over four years. In 2011,
11 Deanna Santana was hired as the City Administrator by Mayor
12 Jean Quan, who had become mayor in the beginning of 2011. And
13 not to knock Ms. Santana, but she had never before worked as a
14 city administrator. She was not particularly experienced in
15 issues of labor relations or employee relations. And I think
16 what you will find is that she was a little bit defensive when
17 things happened that she felt were not under her control or
18 when things happened that she did not expect, she reacted
19 negatively, and that's the kind of manager that she was.

20 Nonetheless, things went well for the first year or so
21 after Ms. Santana was hired. In fact, in January 2012,
22 Ms. Santana actually promoted Lawanna Preston. She promoted
23 her from being in charge of employee relations within the human
24 relations -- Human Resources Department. In other words, she
25 was reporting to the head of human resources -- she promoted

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1 her to a position where she was reporting directly to
2 Ms. Santana, in other words, as a department head. So instead
3 of reporting to the human resources director, she became a peer
4 of the human resources director, and again reported directly to
5 Ms. Santana, and that was in January 2012.

6 In the spring of 2012, Ms. Santana, who took this
7 responsibility on herself, did a performance evaluation for
8 Lawanna Preston, and here's some of the things she said about
9 her. She said that "Lawanna is a great asset for the City.
10 Her knowledge, skills, and abilities provide needed leadership
11 to employer relations. She attempts to resolve grievances at
12 the lowest level. Lawanna has established great working
13 relationships with organized labor and demonstrates a high
14 level of professionalism and integrity." And she went on and
15 on and on, and that was what Deanna Santana had to say about
16 Ms. Preston in the middle of 2012.

17 Well, at the same time that this was going on, that is
18 this evaluation, a problem arose in Oakland that kind of goes
19 back to what I said a few minutes ago, about something called a
20 Rainbow Teen Center. The Rainbow Teen Center was a building
21 that was established in East Oakland in one of the poorest,
22 most crime-ridden parts of the community. But the City did not
23 complete the building of the center or staff it, so what
24 happened is that one of the members of the Oakland City
25 Council, and I think we have to be fair about this, kind of

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1 stepped outside her role as an elected official and made sure
2 that this Teen Center was opened, and that it was staffed, and
3 it was done in order to serve the kids who lived in that
4 community who needed those services. But this was not the City
5 council member's job, okay. This is the job of staff, not the
6 City council member. And you'll hear from the City council
7 member, her name is Desley Brooks, tomorrow, and she'll talk a
8 little bit about this.

9 Whether she was right or wrong is really irrelevant for
10 purposes of this trial, but it became a big issue. It became
11 an issue, because there's a question of was the City going to
12 pay the bill for fixing up the Center? Was the City going to
13 pay the staff who were working in the Center?

14 And so a report was commissioned by Ms. Santana, and
15 Ms. Santana asked Ms. Preston and an assistant city manager
16 named Fred Blackwell to write up a report about what had
17 happened with the Rainbow Teen Center and what should happen in
18 the future, and so they did that. And Ms. Preston, in her part
19 of the report, discussed how things were not done properly in
20 terms of the staff, and how they should be done.

21 As the report was being completed, Ms. Santana and the
22 City Attorney of Oakland, a woman named Barbara Parker, who you
23 will also see tomorrow, suggested that what should be included
24 in the report a statement that indicated that Council member
25 Brooks had violated the law, had violated the Oakland City

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1 Charter, and should be reported to the Alameda County District
2 Attorney for possible prosecution.

3 Now, when Ms. Parker and Ms. Santana suggested to
4 Ms. Preston that that paragraph go into the report, and you'll
5 see the report, Ms. Preston said no. Number one, it's not our
6 job, the City staff, to decide whether City-elected officials
7 should be prosecuted; and number one, to tell you the truth,
8 she said a lot of the elected officials in Oakland are engaged
9 in similar conduct, where they, you know -- you've heard the
10 expression *they stepped out of their lanes, they didn't stay in*
11 *their lanes* -- they tried to influence the staff in city
12 government, and to pick on Desley Brooks, who was the only
13 black woman on the City Council, would be racially
14 discriminatory, and Ms. Preston will tell you she thought that
15 would violate the laws against racial discrimination. And she
16 will tell you that when she put her foot down on that issue,
17 Ms. Santana and Ms. Parker were angry at her. They didn't like
18 it, but ultimately they gave in, because they needed to do this
19 report.

20 Well, this report was ultimately completed on
21 February 24th, 2012. On March the 6th, 2012, there was a
22 meeting of the Oakland City Council, and you'll hear this
23 meeting is probably like an only-an-Oakland experience. This
24 was a chaotic meeting. The council chambers were jammed to
25 capacity, people lined up to speak to support Desley Brooks or

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1 to oppose Desley Brooks, to criticize her of what she had done
2 of stepping outside her role as a Council member, or to praise
3 her for getting this center opened in East Oakland.

4 And an issue arose in that center -- excuse me -- in that
5 meeting where the question was whether Ms. Santana had advised
6 Ms. Brooks that Ms. Santana and the park & rec director were
7 going to have one director for both the Rainbow Teen Center and
8 another center. And the question was whether Ms. Santana had
9 actually told Ms. Brooks about that, and Ms. Brooks said no,
10 you never mentioned that; you never told me we were going to
11 have one director for both centers. And Ms. Santana, who sits
12 up on the podium at the City Council meeting, called out to
13 Ms. Preston and Mr. Blackwell, *Step up to the mic and tell the*
14 *City Council that in fact I had given Desley Brooks that*
15 *information.*

16 Now, you'll hear from Fred Blackwell. He's going to be in
17 tomorrow, I believe, or maybe the next day. He'll say he
18 didn't want to be called up to the mic. He thought things were
19 not as clear as Ms. Santana portrayed them to be, so he just
20 avoided going up there. Ms. Preston went up to the mic
21 reluctantly and told the council *I'm sorry, I have to disagree*
22 *with Ms. Santana. Desley Brooks was not present when that*
23 *information was given about having one director for both*
24 *centers. That's a mistake that Ms. Santana made. You would*
25 *think no big deal.*

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1 But after March 6th, things really started to go downhill
2 between Ms. Santana and Ms. Preston. Ms. Santana became cold
3 with her, didn't have their regular weekly meetings, often
4 excluded her from group meetings. But things went on, and as I
5 mentioned, there was that tremendous evaluation. It was never
6 signed, but it was done.

7 Now, things are moving ahead. Jump ahead almost one year
8 later, one year later, an issue arises regarding collective
9 bargaining. And, you know, this may seem like technical stuff,
10 maybe it is, maybe it isn't, but it's the law. The City of
11 Oakland had a policy about how it would negotiate with the
12 unions that represent its employees: You have fire fighters,
13 you have police officers, you have construction workers, truck
14 drivers, you have a big unit of clerical employees which was
15 represented by SEIU. And City policy, as it's relevant here,
16 has two aspects. One, the policy was that employee relations
17 does the negotiating; okay? We don't want department heads,
18 whether it's the police chief or the fire chief or the park &
19 rec chief to go out cutting their own deals with their unions;
20 and secondly, we want to make sure that before you make a
21 proposal to a union, you go to the City Council and get their
22 approval. The City council said, look, we don't want the
23 negotiators going to meet with the unions and offer them pay
24 raises or other benefits without advance Council approval. So
25 again, that was Ms. Preston's job, was to make sure that that

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1 policy was followed.

2 Well, in June of 2003, the fire chief, who was, you know,
3 a fine person, not trashing her, not criticizing her, but
4 nonetheless, she either didn't know the rules or there was some
5 other issue that arose, she met with the firefighters unions,
6 it's called Local 55, and negotiated a deal with them to extend
7 something called the para transit or para-something program for
8 a month, and Ms. Preston found out about it. Ms. Preston said
9 to the fire chief, Ms. Reed, *You can't do this; you have to go*
10 *through employee relations, number one, and we have to get*
11 *Council approval, and there was no Council approval.*

12 And Ms. Preston then told Ms. Santana about what the fire
13 chief had done. Well, Ms. Santana didn't like that news. She
14 didn't like that news, because it was embarrassing to her that
15 a department head who reported to Ms. Santana was going out,
16 breaking the rules, violating the requirements that the Oakland
17 City Council had put on its department heads, and she also was
18 upset because she and the fire chief were colleagues who had
19 worked together. Ms. Santana came to Oakland from San Jose.
20 That's where she worked before she came to Oakland. The fire
21 chief, Teresa Reed, had also worked in San Jose, and
22 Ms. Santana was the one who was responsible for bringing
23 Ms. Chief Reed to Oakland. So it was kind of an embarrassment
24 to her. And she's like, *Well, what's the big deal? We don't*
25 *need Council approval, and so on.*

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1 Ms. Preston says, *now, wait a minute. There's a law*
2 *that's involved here, it's called the Meyer Miliias Brown Act,*
3 and that's the state law which governs labor relations between
4 the employees of a city, like Oakland, and the City itself.
5 And if you have people who don't have authority making
6 agreements with the unions, then the unions can turn around,
7 when they find out that they've made an agreement that was not
8 valid, and scream that this is what's called an unfair labor
9 practice, and that the City had misrepresented itself again by
10 sending someone to the table who didn't have the authority to
11 make that deal.

12 So for all these reasons, Ms. Preston was trying to
13 enforce the rules. Ms. Santana is unhappy again, embarrassed,
14 her appointee is embarrassed, and they had to straighten it all
15 out. And what you'll hear is that the firefighters Union was
16 very upset about all this, because they will say they went to
17 the table, they made an agreement, then they're told the
18 agreement is not valid, and they felt a little disappointed.
19 They felt like they had been had, so to speak. But they were
20 able to straighten things out. They went to the City Council
21 after the fact, the City Council ratified the agreement, and
22 everything was smoothed over. But, again, Ms. Santana was sore
23 at Ms. Preston because of the way that it was handled.

24 Now, the third big incident comes up almost immediately
25 thereafter. The agreement with the firefighters Union was

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1 ratified in July, then in August, another problem develops.
2 This problem involves employees who were called temporary
3 part-time employees, in other words, they're not permanent
4 employees, they're not full-time employees, they're temporary
5 part-time employees, TPTs they're called. These employees were
6 one of the bargaining groups that was represented by the
7 Service Employees International Union.

8 Now, under the contract between the Union and the City of
9 Oakland, and under state law, the same law I mentioned earlier,
10 the different section of the Meyer Milias Brown Act, the City
11 is obligated to deduct Union dues from the paychecks of
12 employees who are part of this bargaining unit and remit the
13 money to the Union. And lo and behold it turned out there was
14 a failure to do this. The way the Union found out about it is
15 that there was a discussion, public discussion about how many
16 temporary part-time employees the City of Oakland was employing
17 at that time, and that number was far greater than the number
18 of employees for whom dues were being deducted and sent to the
19 SEIU.

20 So on August 6th, 2013, there was a meeting, and at that
21 meeting were several people from the Union, the City's finance
22 director, a person by the name of Katano Kasaine, and two of
23 Ms. Preston's subordinates. And everyone, they will tell you,
24 you will hear from several of the people who were at this
25 meeting, were very surprised when Ms. Kasaine said, *oh, I*

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1 haven't been deducting the dues from the temporary part-time
2 employees. I was afraid that if I did, people would complain
3 about it. My phone would be ringing off the hook. That's what
4 she said.

5 And Ms. Preston's two subordinates who were there, a woman
6 by the name of Winnie Anderson, another woman by the name of
7 Sonia Lara, go back to Ms. Preston and said, *Hey, guess what?*
8 *Guess what Ms. Kasaine just admitted at a meeting?* And the
9 SEIU people are angry. They're going to file a grievance.
10 This may cost the City a lot of money, because apparently this
11 practice had been going on not just briefly but for years, and
12 we've got to figure out what to do about it.

13 So Ms. Preston basically says, *Look. Okay. Calm down.*
14 *We'll fix this. I'll investigate the problem, and we'll do*
15 *what we need to do.* And again, she was concerned that this was
16 a violation of state law, as well as the City's agreement with
17 the Service Employees Union.

18 So she begins to investigate it. And what happens next is
19 that she contacts Ms. Katano Kasaine and says, *Look. We need*
20 *to talk about this. I want to interview you.* And Ms. Kasaine
21 says, *You don't need to interview me. I don't have anything I*
22 *need to say about this.* And, in fact, what you will hear is
23 that Ms. Kasaine has denied, ever since August 6th, 2013, that
24 she made the statement at the meeting. She denies that, even
25 though everybody else who was at the meeting, the Union side,

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1 the management side all heard it, some people wrote notes.
2 You'll hear from people who will bring these notes into court.
3 But, for whatever reason, including even when I took her
4 deposition a few months ago, Ms. Kasaine denies she ever made
5 that statement.

6 Ms. Preston begins to investigate the grievance. Within a
7 week, Ms. Santana took away from Ms. Preston the responsibility
8 to investigate the grievance. She said no -- this is on
9 September -- September 19th, excuse me, September 12th, 2013.
10 Ms. Santana says to Ms. Preston *You're not going to investigate*
11 *this grievance. I'm going to turn it over to the City*
12 *Attorney.* So Ms. Preston says *Why? This is my job to*
13 *investigate the grievance.* The City Attorney's job is not to
14 investigate grievances. In fact, the City Attorney will admit
15 that she had never been asked to investigate a grievance before
16 that. But they wanted to take Ms. Preston out of the loop.
17 And, again, Ms. Santana was unhappy about this. It was
18 embarrassing to her. Katano Kasaine was one of her prime
19 subordinates, a person that she had an alliance with, so they
20 tried to take Ms. Preston out of the loop on the investigation
21 of the grievance.

22 Well, next thing that happens, and we're kind of coming to
23 a head on that just now, is that Ms. Kasaine, without any
24 approval from anyone, contacts the president of the Union, a
25 guy by the name of Dwight McElroy, and asks him to drop the

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1 grievance, and he reports that to Ms. Preston. Ms. Preston
2 immediately turns around and sends a memo to Ms. Santana and to
3 the City Attorney, Barbara Parker, and says *Look. This is what*
4 *just happened here. Ms. Kasaine is interfering with the*
5 *grievance process. That's going to get us in trouble again.*
6 *That's a violation of the law. You need to allow the grievance*
7 *process to go ahead.*

8 So everything is getting pretty chaotic right now, and
9 things are not working the way they're supposed to. There's a
10 City Council meeting on October the 1st, 2013, and at that
11 meeting in closed session there was supposed to be a
12 conversation not about this grievance, but about the
13 negotiations between the City and the same Union, the Service
14 Employees International Union, on various contract issues.

15 And when the Union and City are negotiating contracts,
16 each side puts forward written proposals to the other side, and
17 on the SEIU proposal to the City, which was being looked at by
18 City Council members at this meeting on October 1st in closed
19 session, there's a statement that says, "SEIU is not going to
20 drop its grievance." In other words, the SEIU people were
21 saying we're willing to negotiate on these contract issues.
22 We're not going to drop the grievance.

23 Before that meeting, on October 1st, Ms. Santana had told
24 Ms. Preston not to bring up the issue of the grievance, not to
25 bring it up. Ms. Preston said *Fine. I won't bring it up. But*

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1 the City Council members looking at the statement, one of them
2 says to Ms. Preston *What's this about a grievance that SEIU is*
3 *not going to drop?* And Ms. Preston has to tell the truth. She
4 said, *Well, there's a grievance because of this dues problem.*
5 This was on October 1st, 2013.

6 The next day, Ms. Santana decides to fire Ms. Preston, the
7 very next day, October 2nd. So when Ms. Preston comes to work
8 on the morning of October 3, one of Ms. Santana's assistants is
9 standing there at the door to Ms. Preston's office with a
10 security guard and says, *I'm sorry, Lawanna, you're fired,*
11 gives her a statement of her termination, and that's kind of
12 the way it went.

13 Now, I want to mention just a couple of things before we
14 go on to the next stage of this. At no time was Ms. Preston
15 ever counseled about bad performance. You will see, depending
16 upon how many documents are introduced in this case, there is
17 not one piece of paper where Ms. Santana says to Ms. Preston
18 *I'm unhappy with your performance, this is how you have to*
19 *change, I'm thinking of firing you,* or anything like that.
20 There was never any counseling.

21 When I asked Ms. Santana in her deposition, *Well, you*
22 *know, as a City Administrator, you know you have to document*
23 *things before you fire someone. Why didn't you document your*
24 *dissatisfaction with Ms. Preston if you claim there was this*
25 *dissatisfaction?* Her answer was "I don't know. I don't know."

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1 That's her answer. And she was never counseled. There was
2 never a discrimination.

3 Now, the next thing I want to speak about briefly is how
4 the City of Oakland keeps changing its story about the reasons
5 for the termination.

6 So on October 3, when she's fired, she's given something
7 called a Notice of Termination that's an official City of
8 Oakland form. And do you see what it says on the bottom there,
9 it says "reasons of separation;" do you see that? There's two
10 columns. One column says "lack of work," the other column says
11 "discharged." So it didn't say she was discharged, they said
12 because it was because of lack of work, and they said "see
13 attached form." And the attached form says, "Dear,
14 Ms. Preston, your services are no longer required." There was
15 never any explanation given there as to why she was being
16 terminated, and as I said, they fill out the form that says
17 "lack of work."

18 Now, in the context of this trial, as Judge Cousins
19 mentioned earlier, each side is allowed to send what are called
20 interrogatories to the other side, and these are written
21 questions that have to be answered in writing, and then they
22 have to be sworn under oath under penalty of perjury. So of
23 course my team did that in the course of trial, and we sent
24 interrogatories to the City of Oakland, and they had to answer
25 them. So here was their answer. We asked them: "Describe in

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1 detail each reason for plaintiff's termination." So there's
2 this language where they object and say they're not going to
3 answer them and so on. They say: "Without waiving any
4 objection, and in an effort to provide as complete a response
5 as possible, complete a response as possible, responding party
6 states that plaintiff was an at-will employee, and as such
7 could be terminated or could leave her employment for any
8 reason or without any reason.

9 "Responding party further states that plaintiff disclosed
10 confidential information inappropriately to third parties not
11 authorized to receive it."

12 We never heard what that confidential information is, by
13 the way.

14 "Responding party states that plaintiff failed to maintain
15 the professional relationship with the City Administrator, and
16 failed to maintain professional relations with other
17 colleagues." So that's what they wrote.

18 Now, this statement comes in December 2014, about 14
19 months after she's fired, and it's sworn to by Deanna Santana,
20 a document called a "verification," which is attached to it,
21 where Deanna Santana swears that it's true and signs it under
22 penalty of perjury.

23 In the same set of interrogatories, we asked her to
24 identify the people who made the decision to fire Ms. Preston,
25 and the answer was: "Deanna Santana made it by herself."

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1 Well, okay. That's the story. As I said, we've never had
2 any identification of confidential, quote-unquote, information
3 that was disclosed. Ms. Preston will testify that all the
4 information she had she was authorized to have, all the
5 information she disclosed she was authorized to disclose.

6 In terms of not maintaining professional relationships,
7 the statement I read to you from the 2012 performance
8 evaluation is the only statement, the one and only statement
9 that Deanna Santana ever made to Ms. Preston regarding her
10 relationships with other people, and it says, as I read, that
11 it was professional.

12 Okay. So, well, they decided they needed another set of
13 reasons, so what they did is about a month after the document
14 that I just read to you, they filed what are called
15 supplemental answers to these interrogatories, and they did
16 that in January of 20 -- where are we now, 2015?

17 Now, and in that document, they went on for about four
18 pages as to all the reasons that they fired Ms. Preston, so
19 they said they were unprofessional relationships, complaints
20 about the way in which she treated her colleagues, and she sent
21 actionable labor-related reports to City Council in closed
22 session. I just want to comment on that.

23 Ms. Preston had the authority explicitly and clearly to
24 send reports on labor relations to the City Council, and often
25 the City Council wanted those reports, and we have evidence of

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1 this documented. They wanted the reports promptly.

2 Now, generally speaking, there was kind of a long lead
3 time for submitting reports to the City Council prior to
4 meetings, but negotiations are going on on a kind of
5 quick-paced basis, and the Council wanted reports, timely
6 reports. So yes, sometimes Ms. Preston, as she had the
7 authority, would send a report to the City Council maybe a week
8 or three days or even a day before a Council meeting, because
9 that was what she was supposed to do.

10 There was another issue they brought up way after the
11 fact, that Ms. Preston had interfered with an investigation of
12 an employee in the Human Resources Department who was accused
13 of buying computers without proper authorization. Well, it
14 turned out this employee had in fact had bought some computers
15 that were more powerful than the City's IT network was capable
16 of accommodating, and they got sent back, and then there's an
17 investigation about it. And the investigation was within the
18 Human Resources Department, because the employee who ordered
19 the computers worked in the Human Resources Department.

20 Well, by the time the investigation is moving into its
21 completion, completion stages, an employee in the Human
22 Resources Department by the name of Sonia Lara moved into the
23 Employee Relations Department to work for Ms. Preston. And the
24 head of human resources, on basically really her last day of
25 employment, reached across department lines without getting

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1 Ms. Preston's authorization and asked Ms. Sonia Lara to write
2 up a report on these computers. When Ms. Preston found out
3 about that, this was again something that was being done
4 outside policy. It wasn't just the kind of insult that her
5 staff person had been asked to write a report without getting
6 her permission. The real problem was is that Ms. Preston and
7 her new staff person were responsible for investigating the
8 proposed disciplinary action against the woman who ordered the
9 computers, someone by the name of Deb Grant. And Ms. Preston
10 quite clearly didn't want someone who was investigating the
11 disciplinary matter also to be a witness in the same matter, so
12 she said to Sonia Lara, she said, *look, you're not submitting a*
13 *witness statement on this*, and she took the witness statement
14 away from her, and she did it for the reasons that I have just
15 described.

16 In any case, you know, the explanations go on. I'm quite
17 sure that you'll hear new explanations during this trial of the
18 reasons that they fired her. And I'm just going to mention one
19 other thing on the reasons issues.

20 As I mentioned earlier, the meeting with the City Council,
21 at which Ms. Preston spoke to the Council about the SEIU
22 grievance, occurred on October 1st, and on the morning of
23 October 3rd, she was fired. In her deposition, because I took
24 Ms. Santana's deposition, and she was under oath, and I asked
25 her explain all the reasons as to why you fired Ms. Preston,

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1 and she told me this, and you'll hear it from her lips, and
2 from reading the deposition, she said, well, the last straw was
3 something that occurred on October 2nd, the day after the City
4 Council meeting.

5 On October 2nd, Ms. Santana testified: I was in my office
6 at City Hall, and I was having a meeting. And Ms. Preston
7 called up on the telephone, and I put her on the speakerphone,
8 and she started to berate me and to call me names and to make a
9 big stink about the fact that I had taken her off the
10 responsibility for investigating the SEIU grievance, and that
11 was the last straw. So I decided, after all the problems I had
12 been having with her, on October 2nd, when she made this
13 abusive call to me, to fire her.

14 So I said to Ms. Santana, I said, Well, Ms. Santana, who
15 else was in the room with you when Ms. Preston made this
16 abusive telephone call. And she said Well, it was the City
17 attorney, Barbara Parker, and Otis McGee. Who is Otis McGee?
18 Otis McGee is also an attorney. At that point we were hiring
19 him to investigate the SEIU grievance. And so he and
20 Ms. Parker are in my office when Lawanna Preston was berating
21 me in this angry and disrespectful way over the telephone.

22 You know what I do; right? I took Otis McGee's
23 deposition, and I asked Mr. McGee, I said, Were you at that
24 meeting on October 2nd? Yes, I was. Well, let me ask you
25 this. Did you hear Lawanna Preston be rating and abusing

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1 Deanna Santana? His answer was: *I don't recall hearing*
2 *anything like that.* I don't recall hearing anything like that.
3 That kind of ends the story in terms of the termination, the
4 reasons for the termination, the excuses for the termination.

5 So there's good news and bad news here for Ms. Preston.
6 The bad news is she gets fired from a job that she had had for
7 six or so years, which paid \$157,000 a year at the time of her
8 termination, and which was convenient for her to get to work,
9 paid for her living expenses and her son's living expenses, and
10 so she was out of her job in October of 2013.

11 The good news is that it didn't take her long to find a
12 new job. In fact, by January of 2014, she had been hired to
13 work for the City and County of San Francisco in a similar job
14 doing employee relations, and by the end of 2014, in the City
15 with four times as many employees as Oakland, she was promoted
16 to do the same job that she was doing in Oakland, to be in
17 charge of employee relations for the City and County of San
18 Francisco. The job didn't pay quite as well, and different
19 pension arrangements.

20 So Ms. Preston is actually, even though she's landed on
21 her feet, shown what a good employee she is, she has lost
22 considerable amount of money, and you will hear from an
23 individual who would say -- a Stanford-trained economist by the
24 name of Margo Otis, who will come in and testify, I think
25 Wednesday, and will talk about how she calculated Ms. Preston's

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1 losses, and that those losses come to over \$800,000 over the
2 course of her life.

3 Three elements to this. Number one is past wage loss. In
4 other words, from the day she was fired up until today, what's
5 the difference between what she was making in Oakland, and what
6 she made in San Francisco, that's about 92,000.

7 And then there's future wage loss, which, to explain the
8 process, calculation, how much she will lose from today up
9 until her retirement age. And what economists do when they
10 calculate future losses, they do something called reducing it
11 to present value. And let me explain what I mean, probably
12 some of you know about this already. But you say, well, if her
13 loss is, say, \$40,000 a year for 20 years, well, if you just
14 add that up, 20 times 40 is \$800,000. But you don't need
15 \$800,000 to pay her \$800,000 at the rate of 40,000 per year for
16 20 years, you need a lesser amount, because whatever that
17 amount is, you calculate it in a way so that if you invest it
18 in a safe -- safe investments like treasury bonds or something,
19 how much will you need today to invest in these bonds and get
20 your 40 grand a year for 20 years, and then it's all used up.
21 So the future wage loss is -- present value of future wage loss
22 is \$253,000.

23 And then the third element of the lost wages is the
24 reduction in your pension benefits. Now, again, as bad luck
25 would have it, Oakland and San Francisco are part of different

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1 pension systems. Oakland is part of the CALPERS system, which
2 I'm sure many of you have heard of, which is the main Public
3 Employee Pension System in the state of California, hundreds of
4 thousands of employees who belong to that. San Francisco has
5 its own. It's called San Francisco Employees Retirement
6 System, and it doesn't pay as well, and the employee
7 contribution is greater. So that the difference to Ms. Preston
8 over the course of her lifetime calculated from her retirement
9 date to the date on which her life expectancy will end, is
10 about \$495,000, so that's where we get the \$839,000 economic
11 loss.

12 There's also for you to decide a fair amount to compensate
13 her for her emotional distress, her embarrassment, her
14 humiliation as a result of what they did to her over in Oakland
15 for doing her job and making sure that the rules were followed.

16 And then finally, if you choose to, you can award punitive
17 damages against Ms. Santana, because of her misconduct in
18 firing an employee who did nothing except what she was supposed
19 to do. Thank you.

20 **THE COURT:** Thank you very much, Mr. Siegel. Let's
21 take at least a stand-up and stretch break. If you need to use
22 the restroom, please feel free to do that, too. We'll come
23 back in five minutes for the defense opening statement.

24 (Recess taken at 1:40 p.m.)

25 (Proceedings resumed at 1:45 p.m.)

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1 (Proceedings were heard in the presence of the jury:)

2 **THE COURT:** All right. The jurors are back. Everyone
3 seems to be here. You may proceed.

4 **MR. LAFAYETTE:** Thank you, Your Honor.

5 **OPENING STATEMENT**

6 **MR. LAFAYETTE:** Good afternoon.

7 There are always two sides to every story, and I'm now
8 going to tell you the other side. I'm going to tell you some
9 facts you didn't hear before. I'm going to tell you about
10 people whose names weren't mentioned to you before.

11 Deanna Santana came to the City of Oakland on August 1,
12 2011. Prior to that, she had not worked with Ms. Preston ever,
13 and when she came to the City of Oakland on August 1, 2011,
14 there was some problems, clear, a budget deficit, a budget
15 deficit made more substantial when the state of California
16 decided in December of 2011 to eliminate redevelopment
17 agencies.

18 So during that time period, up until that time period,
19 Ms. Santana had her hands full trying to manage a budget, an
20 increasing deficit, and realizing that the only way to do that
21 was to flatten the organization of the City of Oakland -
22 flatten it meaning reducing, eliminating levels of management,
23 which is what she started on doing. And in the midst of that,
24 in the midst of that, there's something that has been alluded
25 to in here that has not been fleshed out that I want to talk

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1 about, something called Rainbow Teen Center.

2 Now, it starts out as a discussion about whether or not a
3 vendor should be paid. And Ms. Santana, as the City manager, a
4 City Administrator says *I'm going to put two people on this*
5 *issue into evaluating whether or not this vendor should be*
6 *paid*, and the vendor was a company called Pulte Homes. Now,
7 Pulte had gone out and done work at this center, which no one
8 is going to knock the idea that this center was probably
9 necessary, probably is a good thing. But the net result of it
10 is this center was built without people complying with the
11 rules and the guidelines mandated by the state of California
12 and the City of Oakland to make sure that funds of the City are
13 not expended on whim, and are not expended without public
14 accountability. That's what Ms. Santana started realizing when
15 she started getting information back from Mr. Blackwell and
16 from Ms. Preston that people were hired in the Center without
17 being vetted, that people were hired to work with children
18 without being processed through those systems that needed to be
19 handled, that people were being hired without complying with
20 the civil service rules. All of those were things which were
21 landing on Ms. Santana's desk, and more importantly, they were
22 landing in the newspapers. Yeah, the newspaper reporters were
23 circling, trying to find out what had happened, trying to find
24 out whether or not the City Council person who was in charge,
25 who was also the Vice-Mayor, had participated in violation of

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1 City policy, City ordinances.

2 Now, I heard Mr. Siegel say something about Ms. Santana's
3 background, so let me tell you who she is; okay?

4 Ms. Santana didn't just drop out of the sky. She got her
5 undergraduate degree from the University of Berkeley,
6 University of California at Berkeley, got her Masters at MIT in
7 City Planning, and then did additional work in the School of
8 Public Policy at the University of California Berkeley, and
9 after that, she took a series of jobs in public government
10 ending up at, just before coming to the City of Oakland, as
11 the -- I think it's Deputy City Manager for San Jose where she
12 handled a budget that included 3,000 employees underneath her
13 and over \$500 million in a budget. That's who came to Oakland
14 on August 1, 2011.

15 What happens? We get to talking about these different
16 events that are taking place. We talked about something called
17 Rainbow Teen Center. We talked about a City Council meeting.
18 We talked about the fire department. Now let's put some flesh
19 on the bones and look and see what all of this really means,
20 and the timeline. Because you see, everything that's talked
21 about in this case, everything that's talked about in this case
22 takes place over a two-year period of time, less than, or just
23 about, between the time she's hired on August 1, and the time
24 that Ms. Preston is terminated on October 3rd, 2011 to 2013.

25 So, Ms. Preston, Ms. Santana, City of Oakland, Rainbow

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1 Teen Center, firefighters Union, dues collection, those are the
2 issues as I see it, as I've heard it, refusal to falsify a
3 report, that's what the judge read, refusal to provide false
4 testimony to the City Council, report that the City of Oakland
5 was already entering into a contract with the Fire Department's
6 Local 55, reporting that the City of Oakland was allegedly
7 failing to collect Union dues.

8 Let's move forward. Let's put some dates with these
9 events. The report, February 2012, so let's talk about that
10 for a second.

11 February 2012, Ms. Preston says she did something which
12 led to her getting fired 18 months later, not the day after,
13 not the week after, not the month after, 18 months later.
14 That's what she says. She says there's a City Council meeting
15 on March 6th, 2012, and she says she did something at that City
16 Council meeting which led to 18 months later her losing her
17 job.

18 I'm going to talk about what all happened in the 18 months
19 between those events, from the date of those meetings until the
20 date of her separation of employment. You see, that's the
21 timeline. I know it's a little squiggly, but it's going to get
22 straight at some point. Here. Date of Santana hiring, date of
23 termination, what's the next thing you see? The 18 months.
24 You see that's February right there, 2012, termination date
25 (indicating).

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1 So let's talk about these things for a second. What is
2 this Rainbow Teen, and what is this meeting? Let's put some
3 meat here.

4 Ms. Preston and Mr. Blackwell, along with Ms. Orologas,
5 were charged with, one, gathering information, two, preparing a
6 report that would go to City Council which would outline the
7 events that had happened which led to the problem which the
8 newspapers were circling about.

9 So at some point Ms. Santana says, *okay, looks to me like*
10 *there's something here that's not just people being outside of*
11 *their lanes, but there might be more to it than just people*
12 *being outside of their lanes, and I need to know, and I need to*
13 *know what my courses of action are if that's in fact the case.*
14 *Am I supposed to just sweep this up under the carpet, or am I*
15 *supposed to do something with it?* And she needs to know,
16 because she's not been at the City of Oakland for more than
17 approximately six months, and she needs to know how Oakland
18 works, and that's the subject of the conversation: What can we
19 do? What can we do? That's the conversation that she engages
20 in. You're going to hear from the people who were present
21 during that conversation where they discussed what's supposed
22 to happen.

23 And you know what the most amazing thing that you're going
24 to hear? You're going to hear that Ms. Santana concluded that
25 she didn't think that she had enough or that she should put

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1 anything in a report that said anything about anybody going to
2 a DA. She thought that she should put in the report as much as
3 she could about what they knew, and she thought she should put
4 in a report that what she had found may lead to the possibility
5 of other investigations.

6 And what you're going to hear is that what she said, what
7 she wanted to do is exactly what was done, and what you're
8 going to hear is that Ms. Preston agreed with her, and
9 Ms. Preston signed off on that same report that identified the
10 risks, the possibilities of people doing things that they
11 shouldn't have done, and a statement that indicates that there
12 was a need for a possible future investigation, *but it's up to*
13 *you, City Council, to decide.* That's the way that played out,
14 and that was it.

15 And you're not going to hear anybody say that Ms. Santana
16 was angry at that meeting, Ms. Santana was steaming at that
17 meeting, Ms. Santana starting doing stuff to her after that
18 meeting. No. You are going to hear that after that meeting a
19 supplemental report was prepared based on questions from the
20 City Council. And after that meeting, Ms. Preston was invited
21 to come to the City Council meeting, which she did. And during
22 that meeting a question was asked. That's what you're going to
23 hear is said, that she's at the meeting, a question was asked,
24 and she's asked to stand up and say something.

25 Now, what was the question? You won't have to listen to

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1 me or Mr. Siegel. Oakland City Council meetings are
2 videotaped. You're going to get to see the videotape of the
3 Oakland City Council meeting, and when you see it, you're going
4 to hear the question framed. The question was, again, and this
5 is Ms. Brooks:

6 "City Council member gave me her word when we met on the
7 22nd or 23rd of last month that we would maintain the staff
8 that was there.

9 "Ms. Santana: That's -- that's not true.

10 "Ms. Brooks: That's absolutely true.

11 "Ms. Santana: What we said is we would fold them into an
12 existing open recruitment, and they need to meet minimum
13 qualifications."

14 Stop. Why? Because these are people who didn't go
15 through civil service; these are people who weren't vetted to
16 work with children; these are the people who needed to be
17 properly integrated into the City, and there was some who
18 didn't meet those qualifications.

19 "Ms. Santana: The report already notes that we know for a
20 fact that some do not meet qualifications. I do believe in
21 that conversation we raised it with you." That was
22 Ms. Santana's statement.

23 And then Ms. Santana says: "I would ask either Lawanna or
24 Fred to confirm." That's what Ms. Preston was asked to
25 confirm, whether or not there was some who didn't meet minimum

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1 qualifications.

2 So what did she say? "At the meeting with Council member
3 Brooks, we did discuss maintaining staffing ratios at the
4 Center so that all the programs that were currently programs
5 that were there could be facilitated. As the City
6 administrator stated, there in previous reports it was clear
7 that there were certain employees that were currently working
8 there did not meet the minimum requirements."

9 Ms. Preston goes on to say: "I don't believe we made a
10 commitment that every person there would be there. What we
11 said is that we would keep the programs going." That's what
12 she said. She responded directly to what Ms. Santana asked,
13 and confirmed it.

14 When you read -- when you listen to this transcript and
15 you hear it and you watch them, you will see that Ms. Brooks
16 intercedes and asks her a different question, which she
17 answers. But that was a response to a different question, not
18 Ms. Santana's request that she come up and speak to.

19 But after that what happened? Is Ms. Santana angry at
20 her? Is Ms. Santana mad at her? What's the evidence? You see
21 the evidence is a document that you will see that that evening
22 Ms. Preston writes an email to Ms. Santana, and she says.
23 Wait. How does this go? "I think you came out of the meeting
24 looking good. You took the high road and held your position.
25 I am sorry I had to contradict you tonight. I hated doing it,

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1 but I had to tell the truth. I hope you understand."

2 What does Ms. Santana write back? Does she say *I'm angry,*
3 *I'm mad, I agree you contradicted me.* No, she wrote back:

4 "You did not contradict me. I was answering specifically to
5 her comment restaffing stays," which is what I read. And it
6 goes on. You'll see this. You'll see that Ms. Santana's
7 position all along was that you didn't contradict me, you and I
8 are on the same page, there is no problem here.

9 So after that, does Ms. Santana do something negative to
10 her? No. Ms. Santana decides and announces that the
11 transition team for the Rainbow Teen Center is now going to be
12 Ms. Preston and Mr. Blackwell, and sends out an email to that
13 effect. So there, that's the first thing.

14 Second thing, after that, this "re this promotion" that
15 was talked about, the promotion actually needs to be in
16 context, and Ms. Santana will do a wonderful job of explaining
17 that to you. But suffice it to say, that the money part of
18 that didn't come into play until April, and you will hear that
19 Ms. Santana actually increased the general compensation to
20 Ms. Preston after those two events took place.

21 What you're also going to hear is that she did not give
22 her that performance evaluation. That did not happen. And
23 you're going to hear someone come into this courtroom and tell
24 you exactly what that thing is, and who did it; okay. That's
25 what's going to happen in this courtroom. But Ms. Santana has

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1 already testified under oath that she didn't do that
2 performance evaluation that Mr. Siegel spoke about.

3 So now you got that. You get the increase in the salary.
4 Now, was everything rosy from that point into the end of her
5 employment? Absolutely not. Absolutely not. You see these
6 red lines on the bottom of this screen (indicating)? These red
7 lines indicate problems that arose with regard to
8 Ms. Santana -- Ms. Preston after these events took place, after
9 she assumed the position as the Director of Labor Relations.
10 You see, up until this point in time, she was reporting up
11 through Ms. Gourdine. She didn't have to report to the City
12 Administrator. She didn't have to do certain things, meet with
13 certain people, and have all that she had done now being
14 reviewed. Now she's in the big room, and now everything that
15 she does or does not do is now much more illuminated, and
16 that's what starts happening now. And to the extent that she
17 says that she was unaware, that would be untrue, and you'll see
18 it.

19 These events that we're talking about here, what are they?
20 May 11th, 2012, Scott Johnson comments to her about her failure
21 to get along with her co-workers, and one specifically, Katano
22 Kasaine, Budget Director. You'll hear this. You will hear
23 that Ms. Preston was so taken by what Mr. Johnson said to her,
24 that she wrote her own email back responding to his comments
25 and criticisms about her performance.

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1 Next one is at July 20. Andrea Gourdine, the Human
2 Resources Director starts making complaints about her and
3 commenting about how she's not being able to work with her
4 cooperatively.

5 August 15, Scott Johnson is commenting to her again about
6 a performance issue relating to processing of audits and
7 processing of money relating to audits and paying checks
8 without a proper paper trail.

9 I can't see that far anymore, but that looks like
10 January 4, 2013. I'm hoping that's what it is, but that would
11 be the Union now. You see, let's talk about her role. Her
12 role is to be the focal point, the City's focal point, the
13 knowledge leader, that place that you go to in the City if you
14 have concerns relating to bargaining agreement. We call them
15 MOUs when it's government, as opposed to Collective Bargaining
16 Agreement. They're called memorandums of understanding. Hers
17 is the department. If you want to know the process to get
18 something done, you go to her. If you want to know how are you
19 supposed to do it, you go to her. If you've got an employee
20 who is a problem, you go to her. She's the person. She is the
21 knowledge base for all this information. She's the consultant
22 to the departments.

23 A fire chief knows how to fight fires, that's what fire
24 chiefs know. Fire chiefs are not supposed to be those people
25 who know all things about MOUs. They go to the people who

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1 handle that and say *Help me, help me do this*; right? That's
2 where we're going to go with this; right?

3 So now, now the unions are complaining though. They're
4 complaining and saying that Ms. Preston is doing things that
5 they don't like. But look. They'll come here and tell you.
6 They'll tell you. And all of this is going to Ms. Santana.
7 These things are not being unsaid. They're going to
8 Ms. Santana.

9 This keeps going on, more and more complaints, more and
10 more frictions, and finally you get to this (indicating). You
11 see, that's Internal Affairs. So let's talk about Internal
12 Affairs for a second.

13 The internal Affairs we normally associate with the police
14 departments, and they're the people that conduct
15 investigations. They're called Internal Affairs. So there's
16 something that happens that's a problem, and it's not a simple
17 problem. The City has a budget deficit. You're not supposed
18 to be spending money that you don't have. You're not supposed
19 to be buying computers that you don't have money for. If
20 you're going to buy things, you're supposed to have a contract
21 approved by the Council in order to move forward.

22 So now what's happened is not that somebody bought a
23 computer that was just too powerful, it's that somebody bought
24 a computer, it is that somebody has got people working for them
25 and doing things for them. And that's where Andrea Gourdine

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1 lands in this issue, and she wants to know why and how this is
2 going on, and she goes to a person who reported to her, Sonia
3 Lara. But you won't hear Sonia Lara testify in this case until
4 we put on our case, but Sonia Lara was a person who ultimately
5 transfers over to start working for Ms. Preston. But before
6 she does that, she's asked by Ms. Gourdine: *I need you to*
7 *prepare a written statement describing what you witnessed and*
8 *what you understood had happened.* Well, in her written
9 statement that she prepared was a reference to Ms. Preston.
10 We'll talk about that.

11 So now, when Ms. Preston walks up to a copy machine and
12 she sees it there and she sees her name in it, she tears it up
13 (indicating). She calls Ms. Lara in, and she tells Ms. Lara
14 *you work for me now*, and then she gives this excuse, and she
15 says, *You may be the witness for something, but you work for me*
16 *now.* And then she says, *you may have to investigate*, which
17 that piece right there, just take that piece right there,
18 because that piece right there goes to Ms. Santana, the person
19 who is supposed to be monitoring and conducting investigations
20 in the workplace is tearing up statements (indicating), and the
21 justification for tearing up the statement is you might have to
22 investigate. It dawns on Ms. Santana that if the issue is a
23 witness versus an investigator, you take the witness, and you
24 get somebody else to investigate.

25 When this happens, coupled with everything else that's

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1 happening, Ms. Santana is like *I've got the wrong person in*
2 *this job. I've got the unions complaining. I've got coworkers*
3 *complaining. I've got torn up witness statements. I've got*
4 *the wrong person in this job. But then she says: We are about*
5 *to go into bargaining with the Fire Departments Union, the*
6 *Police Departments Union, the SEIU, and this is the person I*
7 *got? If I change horses in the middle of the stream, how much*
8 *disruption is this going to cost? How much disruption is this*
9 *going to create? Can I just get through the bargaining before*
10 *I do this? And you're going to hear that she talks to somebody*
11 *else about it, the Mayor. You see, she and the Mayor discuss*
12 *it, and they -- and they have similar minds about this. Yes,*
13 *but before bargaining? Just before bargaining?*

14 So now, that red that you're showing there, that's showing
15 the date that Internal Affairs started its investigation, and
16 that last piece of that red, which is I think September 30,
17 October 1, 2013, that's when the investigation report was
18 completed, and that's when John Lois, who conducted the
19 investigation report, presented his findings to Ms. Santana.
20 But along the way he had been telling her about the things that
21 he was uncovering. For example, after Ms. Lara was actually
22 interviewed by Internal Affairs, Ms. Preston called her into
23 her office and had the subject of the investigation, Ms. Grant,
24 there with her, with the two of them saying things like: *We're*
25 *just friends, you can tell us what happened in there with the*

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1 *investigators.* And to Ms. Lara's credit she says, *No, I can't.*
2 *No, I can't.* This was given to her. You'll hear Ms. Lara talk
3 about what she went through and how troubling that was for her.

4 So now, that puts us into the spring of 2013. We're going
5 into bargaining now. So you heard something about the -- I'll
6 tell you this. The complaints didn't stop during the
7 investigation. We'll talk about those when we get there, but
8 there are more complaints that come in, more complaints that
9 come in, more complaints that come in, more complaints that
10 come in, more complaints that come in; okay?

11 So now, we come to this issue of the firefighters. I told
12 you before, you see, Ms. Preston's group is the group that's
13 supposed to be assisting the Department in their negotiating
14 efforts, helping them make sure that they don't violate rules
15 and stuff, guiding them, giving them direction.

16 The fire chief came to the City in March 2012. She had
17 been someplace else before. "She," a woman. And she came to
18 the City as the fire chief, and she didn't -- she was getting
19 her feet solid with the City itself. And so finally they wound
20 up, in June of 2013, June 2013, in June 2013, she realized
21 there's a program for paramedics to increase the number of
22 paramedics available for City fire companies to be able to go
23 out and help people, that there's a component of that that is
24 going to expire on June 3rd, and they have been talking with
25 the Union about whether or not they're going to let that

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1 component expire or if they want to do something more for the
2 people of the City of the Oakland. That's what the discussion
3 is.

4 So now, Ms. Preston had Winnie Anderson, who was one of
5 her people who she had a lot of confidence in, who worked with
6 her in labor relations in her department. And before that, she
7 had another person, Ms. Gist, I forgot her last name, Skinner,
8 who had now moved over to fire. So, on I think that's probably
9 June 17th, Ms. Gist-Skinner writes an email, and she writes
10 this email -- Your Honor, could I move a little closer so I can
11 see?

12 **THE COURT:** You may.

13 **MR. LAFAYETTE:** Thank you.

14 She writes this email to Ms. Anderson, who is one of
15 Ms. Preston's subordinates. She says, "The current city MOU
16 has a paramedic support program which has been in place since
17 1999. The MOU status, the PSP termination, terminates if the
18 City does not -- City/Union do not reach agreement prior to
19 6/30.

20 "On June 17, OFD met with Local 55, the Union, to discuss
21 whether PSP would continue." And she goes on, and she says:

22 "Also, given the impending program end date, in light of
23 negotiations and the budget workloads, Local 55 was open to
24 extending the PSP for a brief period, 30 days. If this is to
25 occur, we will need a side letter, a side letter extending the

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1 term of the contract for 30 days to complete negotiations."

2 Now, is the Fire Department out there doing this on its
3 own? No, it's going to Ms. Preston's group and telling them
4 this is where we are. Now, does Ms. Preston's group stand up
5 and say *Hey, you can't do this. Hey, you need to go to*
6 *council. Hey, there are rules out there you need to follow.*
7 Is Ms. Preston's group doing it? Watch and see.

8 "Dear Trinette," this is from Ms. Anderson, "Happy Monday.
9 Here is a draft side letter to allow the parties to extend the
10 PSP program into July 30."

11 So Ms. Preston's group prepares the side letter.
12 Ms. Preston's group sends the side letter to the Fire
13 Department for the Fire Department to use. The Fire Department
14 is doing what it's supposed to do. It's going to Labor and
15 it's asking for assistance. Labor is giving the assistance,
16 and it's telling them to go forward.

17 What happens after that? Let's see.

18 "For our conversation, we would like to sign the side
19 letter and make good faith negotiations," on June 28th. That's
20 the Fire Department writing to Labor saying this is what we
21 want to do. Is Labor saying *Oh, no, stop, you can't do that?*
22 Is Labor saying, *You're doing the wrong thing?* No, Labor is
23 saying *Go ahead.* In fact, Labor goes to the meeting, signs the
24 agreement, and after they sign it, they get other people's
25 signature on it. You know, who is not at that meeting? The

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1 fire chief. The fire chief signs it later. The fire chief is
2 not there for those kinds of things. The fire chief is not
3 there to go to a meeting to do this. The fire chief is running
4 the Fire Department; okay?

5 So now what happens? Seems like Fire is working with the
6 Department of Labor; is that what they're supposed to do? What
7 happens? This is what happens. July 2nd is what happens.
8 July 2nd, Winnie Anderson is sitting in a conference room with
9 a representative from Fire, representatives from the Union, and
10 representative from Treasury, Donna Hom. Donna Hom gets up to
11 leave, whispers into Winnie Anderson's ear: *Psst, you can't*
12 *agree to anything.* Winnie Anderson: *I understand.* Okay. On
13 her way out she runs into Ms. Preston, Ms. Hom does, and she
14 tells Ms. Preston that they're in the room and they're talking.
15 Ms. Preston then sends an email or a text message to
16 Ms. Anderson and says *You need to stop*, and she does.

17 And then, this is about July 3rd, Ms. Preston sends an
18 email not to the City Administrator, her boss, no, not to the
19 deputy mayor, no, not to the Deputy City Administrator, no.
20 She sends a letter to the City Attorney, and she said *I want to*
21 *know if the fire chief has the authority to sign the temporary*
22 *agreement extending the contract by 30 days.* At no point does
23 she say the Fire Department came to us for advice. At no point
24 does she say we prepared the document. At no point does she
25 say that we signed the document. She -- you're not going to

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1 see any documents where she forwarded that request to the City
2 Attorney's Office to the City Administrator.

3 The City Attorney's Office writes a letter back to her
4 saying, *Hey, you need to prepare a memo that lays out what*
5 *you're talking about, and you need to run it by the City*
6 *Administrator so we can follow our protocols for making sure*
7 *that we're giving advice as we're supposed to give advice.*
8 *Because you just can't call us up and start asking us stuff.*
9 *There's a process and procedure.* And they copied the City
10 Administrator.

11 And the City Administrator looks at what they wrote and
12 said *Look, if the question is whether or not the Fire*
13 *Department can sign a TA, the fire chief, the answer is no.*
14 The answer is no. Simple. It's real simple. There's a
15 procedure, and it wasn't followed, period. And Ms. Preston's
16 department didn't enforce it, didn't enforce it, didn't give
17 guidance and direction.

18 So the City Administrator did this, facilitates it and
19 gets it done, gets it done, no big issue. You're not going to
20 hear anybody say that there was some hostility here. There
21 wasn't any. That's just over. That's over with. So when they
22 talk about this Fire Department thing, that's what that's
23 about; okay?

24 Then we're going to get to this other issue, this last
25 issue, and I'm going to talk about this document issue; okay?

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1 I'll put this document on the screen. That document. You see,
2 that's a grievance; okay. That's a grievance, and that's a
3 grievance that's filed September 2, 2011. Actually, it's dated
4 that day, but it's transmitted to the City on September 5 by an
5 email from Mr. Keffer at the Union; okay. And he's filing a
6 grievance. You can't see it. You can't see it. He's
7 basically saying that he wants the City to start paying,
8 collecting the dues and administrative fees, period.

9 Okay. To say that there was tension between Ms. Preston
10 and Ms. Kasaine would be an understatement; okay. And so when
11 this happens, Ms. Preston sends an email to Ms. Kasaine saying
12 *I need to investigate this*. Now, you're going to hear a couple
13 people asking the question why do you need to investigate this?
14 And what does this really have to do with me? Because you know
15 and I know and people you work with know that what's been
16 happening with regard to these Union dues, period, end of
17 story.

18 So finally, it becomes rather than investigate this
19 issue -- because you don't see Ms. Kasaine's name in that
20 document at all, at all. Whether or not it's becoming an issue
21 of investigating that issue of collecting those dues,
22 Ms. Preston's email becomes it's an investigation of Katano
23 Kasaine.

24 Now, Ms. Kasaine says *I felt like I'm being set up here*.
25 Ms. Kasaine says *I don't know what's going on here, but I do*

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1 *not believe that I can get a fair investigation from*
2 *Ms. Preston, and she says that to the City manager -- to the*
3 *City Administrator. And the City Administrator is sitting*
4 *there now looking at torn up witness statements, questioning*
5 *people about what they've said to Internal Affairs, so on and*
6 *so on. And she says, for the integrity of whatever this*
7 *investigation is, it needs to have somebody do it other than*
8 *Ms. Preston, because everybody is entitled to fairness, and if*
9 *there's any perception of unfairness, then the whole process is*
10 *tainted. And she said no, no, no, we're going to go a*
11 *different direction.*

12 Ms. Preston doesn't like it, and she continues to press
13 this issue throughout the month of September. The City
14 Administrator has said *I have made up my mind. I am going to*
15 *use someone else.* And she continues to press this issue to the
16 point that, as far as the City Administrator is concerned, it
17 is becoming insubordination.

18 Finally, we get to the last week of September, kind of
19 wrapping up bargaining; okay. John Lois' report has come out
20 that's talked about the tearing up of the report, the talking
21 to -- and Ms. Preston has explanations for everything. She
22 will, and she'll tell you about them. And the City Manager is
23 like *okay, I got that, I got that, I got that, and now we've*
24 *got this grievance, I got that too.*

25 But here's the problem. Ms. Preston talks about urgency

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1 with regard to this grievance: *I got to get it done now, I've*
2 *got to get it done now, I've got to get it done now.* Well, now
3 she is going to tell you herself under oath, and you're going
4 to say that that grievance, the first time that those issues
5 arose was not on September 2, it was on June 26th. You see on
6 June 26th, the Union first filed a grievance addressing those
7 issues, June 26th, two months earlier.

8 Why the urgency in September when she's had it since
9 June 26th? And we're going to talk about the way she directed
10 people to handle it when it came in on June 26th, and how
11 that's so fundamentally different than what's happening now.
12 We're also going to talk about that August 6th meeting.

13 So you get to a point where the City Administrator says,
14 *Okay. I'm done.* And then she gets a phone call, and she'll
15 describe it for you, and you'll look at the emails that came in
16 along with it. It was hostile. It was unpleasant. And yes,
17 there were witnesses there. And Mr. McGee will be here, and he
18 will tell you what happened. He didn't say it didn't happen.
19 He'll tell you what happened.

20 So the termination took place, and when it took place,
21 they didn't want to let her get near her computer. You want to
22 know why? I'll tell you why. Howard Jordan. Howard Jordan
23 was a former police chief. Howard Jordan calls Ms. Santana up
24 on the phone and he says, *Hey, look. You better be careful,*
25 *because Ms. Preston is trying to undermine your position in*

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1 *Union negotiations.* Others were telling her that she's sharing
2 information with the Union so that the Union could use it to
3 its betterment. Ms. Lara will tell you what she overheard and
4 witnessed herself.

5 And so at the fire -- at the police chief's direction, and
6 in accordance with policies, in accordance with the City, she
7 started monitoring Ms. Preston's email, and sure enough, she
8 was sending information. She was sending it to Mr. Siegel.
9 She was sending it to people that shouldn't be getting it. And
10 they decided at that point, *Look. We don't know what she's*
11 *going to do, so we're going to have to separate her in such a*
12 *way that she doesn't get a chance to get to the computers and*
13 *do stuff to them, period, end quote.* And so she was
14 terminated, and that was that, and that was it.

15 I think she got the job offer either before or just after
16 the termination took place. We'll find out about that, as she
17 has been working ever since then.

18 So going back to what this case is about, that she's
19 retaliated against for free speech or she's retaliated against
20 for reporting something involving the Fire Department, we will
21 talk about all of that at the end of this case in the context
22 of the facts that I've laid out, the exhibits that you will
23 see, and in the context of the witnesses who will appear here.

24 I'd like to thank you for your patience. I would like to
25 sit down now, because I'm tired; okay. But we can now start

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1 hearing what people have to say, as opposed to what me and
2 Mr. Siegel say. Thank you, Your Honor.

3 **THE COURT:** Thank you very much. That ends our
4 opening statements. It's a good time for a break for everyone.
5 Let's come back in ten minutes, at 2:38 for our first witness
6 called by the plaintiff. Thank you very much.

7 (Recess taken at 2:28 p.m.)

8 (Proceedings resumed at 2:42 p.m.)

9 (Proceedings were heard out of presence of the jury:)

10 **MR. LAFAYETTE:** Your Honor, I have a quick question.

11 **THE COURT:** All right. Quick.

12 **MR. LAFAYETTE:** Mr. Siegel mentioned the
13 interrogatories in his opening, and they are not marked as an
14 exhibit in this trial at all, and so I am concerned about that,
15 and then he referenced the originals when they have been
16 amended, and my understanding is you use the amendeds and not
17 the originals. I had two issues, one, they're not marked.

18 **THE COURT:** All right. Well, if they're going to try
19 to bring in an exhibit that's not an exhibit, then we'll deal
20 with it then, but I'm not going to deal with anything about the
21 opening statement.

22 **MR. LAFAYETTE:** Thank you, Your Honor.

23 **MR. SIEGEL:** And actually, the Court's rules asked us
24 to designate discovery items that we were going to use at
25 trial, and we did, so we didn't also mark them as exhibits, but

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1 they're in your pretrial binder, or whatever it was called.

2 **THE COURT:** And I think there are some interrogatories
3 that are marked as exhibits, so --

4 **MR. LAFAYETTE:** Those were defendant's exhibits, Your
5 Honor. But if Mr. Siegel can -- I can always be persuaded if
6 there's something there, I'll take a look at it.

7 **THE COURT:** Okay. We'll move on. Call in the jurors.
8 (Proceedings were heard in the presence of the jury:)

9 **THE COURT:** All right. Our jurors have returned.
10 Please be seated everyone.

11 And the plaintiff, please call your first witness.

12 **MR. SIEGEL:** Thank you, Your Honor. We will call
13 Deanna Santana. We call her under Federal Rule of evidence
14 611(c) (2) .

15 **THE COURT:** Ms. Santana, if you will please come
16 forward. And this is the witness stand on this side. Watch
17 your step as you go up. My deputy will swear you in.

18 **THE CLERK:** Please raise your right hand.

19 **DEANNA SANTANA,**
20 called as a witness for the **PLAINTIFF**, having been duly sworn,
21 testified as follows:

22 **THE WITNESS:** I do.

23 **THE CLERK:** Please be seated.

24 Please state your name for the record.

25 **THE WITNESS:** Deanna J. Santana.

SANTANA - DIRECT / SIEGEL**DIRECT EXAMINATION**

MR. SIEGEL: Okay. Thank you.

Q. Ms. Santana, you served as the Oakland City Administrator from August 1st, 2011 until March 4, 2014; is that correct?

A. Yes.

Q. Okay. And the City Administrator is the highest ranking employee within the City of Oakland; is that right?

A. Yes.

Q. Okay. And reports, a City Administrator, to the Mayor and City Council?

A. No.

Q. Who does the City Administrator report to?

A. The Mayor.

Q. And not the City Council?

A. That's correct.

Q. Doesn't the City Council have the authority to approve the termination of the City Administrator?

MR. LAFAYETTE: Objection. Relevance, too, Your Honor.

THE COURT: Overruled. You may answer the question.

THE WITNESS: Can you repeat the question, please?

BY MR. SIEGEL:

Q. Doesn't the City Council have the authority to approve the termination of the City Administrator?

A. I believe the Mayor has to consult with the City Council.

SANTANA - DIRECT / SIEGEL

1 **Q.** Okay. Now, before going to work for Oakland in August of
2 2011, you worked for the City of San Jose?

3 **A.** Yes.

4 **Q.** And what was your position there?

5 **A.** My last position was Deputy City Manager.

6 **THE COURT:** Can we pause for a second? Can you pull
7 the microphone a little closer to you to allow the jury to hear
8 you?

9 **THE WITNESS:** Yes.

10 **THE COURT:** Okay.

11 **BY MR. SIEGEL:**

12 **Q.** And long before that, you worked for the City of Oakland
13 in the mid-to late 1990s; correct?

14 **A.** Yes.

15 **Q.** And you worked for the individual at the time who was the
16 City Manager by the name of Craig Coshun (sic)?

17 **A.** Yes.

18 **Q.** And what was your position at that time?

19 **A.** I was a management intern and an Administrative Analyst
20 II.

21 **Q.** Okay. And did you work with an individual by the name of
22 Lamont Ewell?

23 **A.** Yes.

24 **Q.** And what was Mr. Ewell's position at the time?

25 **A.** He was the Interim Assistant City Manager.

1 Q. And would it be fair to say that Mr. Ewell became your
2 mentor?

3 A. Yes.

4 Q. And would it be fair to say that when you applied to be
5 the City Administrator in Oakland, that Mr. Ewell supported
6 you?

7 A. Yes.

8 Q. Now, soon after you became the City Administrator, did you
9 go about hiring some of your top assistants?

10 A. Yes.

11 Q. And you hired Scott Johnson and Fred Blackwell; is that
12 right?

13 A. Yes.

14 Q. And you hired them as Assistant City Administrators?

15 A. Yes.

16 Q. And there was a problem in their hiring, because you were
17 advised by the Human Resources Director Andrea Gourdine that
18 they could be paid at rates that turned out not to be correct;
19 is that right?

20 MR. LAFAYETTE: Objection, relevance, Your Honor.

21 THE COURT: Overruled. You may answer.

22 THE WITNESS: Can you repeat the question, please?

23 BY MR. SIEGEL:

24 Q. Sure. Isn't it true that when you made job offers to
25 Scott Johnson and Fred Blackwell to be your Assistant City

1 Administrators, you were given faulty advice as to how much you
2 could pay them by Human Resources Director Andrea Gourdine?

3 **A.** No.

4 **Q.** You weren't given faulty advice?

5 **A.** Yes.

6 **Q.** Isn't it true that the offers to Mr. Blackwell and
7 Mr. Johnson indicated that these offers would be exempt from
8 wage freezes that had been enacted by the City Council?

9 **A.** Yes.

10 **Q.** And that was incorrect; correct?

11 **A.** That was information from Kip Walsh.

12 **Q.** Kip Walsh, who was an assistant to Andrea Gourdine?

13 **A.** Yes.

14 **Q.** And ultimately, Andrea Gourdine had to apologize because
15 she embarrassed you by giving you faulty advice as to how these
16 individuals could be compensated?

17 **MR. LAFAYETTE:** Objection, Your Honor, relevance.

18 **THE COURT:** Overruled. You may answer.

19 **THE WITNESS:** No, she -- I didn't ask for an apology.
20 I was asking for how to correct the error.

21 **BY MR. SIEGEL:**

22 **Q.** Isn't it true that Andrea Gourdine apologized?

23 **A.** Yes.

24 **Q.** Okay. And isn't it also true that Lawanna Preston, who at
25 that time was working for Andrea Gourdine, helped correct the

1 error that Andrea Gourdine staff had made?

2 **MR. LAFAYETTE:** Objection, argumentative as phrased.

3 **THE COURT:** Overruled. You may answer.

4 **THE WITNESS:** We were looking at how to resolve the
5 faulty information.

6 **BY MR. SIEGEL:**

7 **Q.** That's correct. And isn't it true that Lawanna Preston
8 helped you resolve the faulty information?

9 **A.** Yes.

10 **Q.** Okay. And isn't it also true that it was a few months
11 after that that you promoted Lawanna Preston to be the Director
12 of Employee Relations?

13 **A.** It was happening all at about the same time.

14 **Q.** Okay. And she was promoted to the position of Director of
15 Employee Relations in January 2012; correct?

16 **A.** Yes.

17 **Q.** And in that capacity, she became a peer, that is, she was
18 at the same level as Andrea Gourdine, whereas in the past she
19 had reported to Andrea Gourdine?

20 **A.** Yes.

21 **Q.** And isn't it also true that in the spring of 2012, you and
22 the members of your direct staff, in the City Administrator's
23 Office, undertook to provide performance evaluations of the
24 various people who reported to you?

25 **A.** Yes.

1 Q. And isn't it true that in that context you took specific
2 responsibility to provide an evaluation of Ms. Preston?

3 A. Yes.

4 Q. Okay. And in fact, a draft performance evaluation for
5 Ms. Preston was prepared; is that right?

6 A. One was prepared.

7 Q. One was prepared. Who prepared it?

8 A. I don't know.

9 Q. Okay. Would you please look at Exhibit 12 in the binder
10 in front of you?

11 MR. LAFAYETTE: Does it have a date, counsel?

12 MR. SIEGEL: A date, no. Actually, it's not dated,
13 but it's apparent from the context that it covers the year that
14 ended May 1st, 2012.

15 Q. Do you recognize this document?

16 A. I've seen it through this process, the deposition.

17 Q. Okay. In fact, I showed it to you at your deposition; is
18 that right?

19 A. Yes.

20 Q. And in your deposition, you acknowledged that that was the
21 performance evaluation that was prepared for Lawanna Preston in
22 the spring of 2012?

23 MR. LAFAYETTE: Objection, improper use of the
24 deposition, ask a witness to summarize what happened there.

25 THE COURT: Sustained. Can you just ask your question

1 flat out and out?

2 **BY MR. SIEGEL:**

3 **Q.** Okay. Isn't that in fact the evaluation that was prepared
4 by your office for Lawanna Preston?

5 **MR. LAFAYETTE:** Objection, calls for hearsay.

6 **MR. SIEGEL:** I haven't even finished my question, Your
7 Honor.

8 **THE COURT:** Start the question again.

9 **BY MR. SIEGEL:**

10 **Q.** Okay. Isn't that in fact the evaluation that was prepared
11 for Ms. Preston for the year that ended May 1st, 2012?

12 **MR. LAFAYETTE:** Objection, vague. It is calling for
13 hearsay.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** I don't know.

16 **BY MR. SIEGEL:**

17 **Q.** Okay. Do you recall me asking you about this at your
18 deposition?

19 **MR. LAFAYETTE:** Objection, improper use of a
20 deposition.

21 **THE COURT:** Overruled.

22 **THE WITNESS:** Yes.

23 **BY MR. SIEGEL:**

24 **Q.** Okay. And I did take your deposition on March the 18th,
25 2015; is that right?

SANTANA - DIRECT / SIEGEL

1 **A.** I don't remember the date.

2 **Q.** Okay. You've read the deposition in preparation for your
3 testimony today; am I correct?

4 **A.** Yes.

5 **Q.** And would it be helpful if I showed you the deposition so
6 you could recall the date?

7 **A.** Sure.

8 **Q.** Showing you Volumes 1 and 2 of your deposition, does that
9 refresh your recollection that I took your deposition on
10 May 18 -- excuse me -- march 18 and March 23?

11 **A.** It does. Thank you.

12 **Q.** Okay. And prior to each session of your deposition, did
13 you take an oath to tell the truth?

14 **A.** I did.

15 **MR. SIEGEL:** Your Honor, I'd like to read from
16 page 100 of Ms. Santana's deposition, beginning on line 10.

17 **THE COURT:** One moment. What is your objection to
18 reading this portion?

19 **MR. LAFAYETTE:** I don't think it's inconsistent with
20 what she's answering.

21 **THE COURT:** I'm asking Mr. Siegel.

22 **MR. LAFAYETTE:** Oh, I'm sorry.

23 **MR. SIEGEL:** As a party, Ms. Santana is subject to
24 having her deposition read for any purpose, including the truth
25 of the matters asserted.

SANTANA - DIRECT / SIEGEL

1 **THE COURT:** But what's the purpose? What are you
2 going for here? Are we going to read her whole deposition?

3 **MR. SIEGEL:** No.

4 **THE COURT:** All right. So tell me why, why are you
5 going to this subject?

6 **MR. SIEGEL:** Okay. I want to show that she was shown
7 the evaluation at her deposition. She first denied she did it,
8 then she acknowledged that she did it, and ultimately --

9 **THE COURT:** Where is that? What page is that?

10 **MR. SIEGEL:** So it starts out on page 100, then it
11 continues on page 102, lines 6 through 23, and then on
12 page 103, excuse me, going from line 25 on page 102 through
13 line 5 on 103.

14 **THE COURT:** Is there somewhere here that's going to
15 authenticate this document and overcome the hearsay objection?
16 I don't see it, so --

17 **MR. SIEGEL:** She says on page 103 in
18 lines 2 through 5.

19 **THE COURT:** Is that the best you've got?

20 **MR. SIEGEL:** That's the best I have, yes.

21 **THE COURT:** All right. The objection is sustained.

22 **BY MR. SIEGEL:**

23 **Q.** Okay. Let me try this another way.

24 Do you acknowledge that that evaluation was done by your
25 office?

1 **MR. LAFAYETTE:** Objection, cumulative, Your Honor,
2 vague and ambiguous.

3 **THE COURT:** Overruled.

4 **THE WITNESS:** I don't know.

5 **BY MR. SIEGEL:**

6 **Q.** You don't know; okay. Do you acknowledge that this
7 evaluation was placed in Ms. Preston's personnel file?

8 **A.** I don't know.

9 **Q.** Okay. Do you recall that you were the person who promoted
10 Ms. Preston in January of 2012?

11 **A.** Yes.

12 **Q.** Do you acknowledge that in the performance evaluation, you
13 refer to yourself in the first person by saying: "I promoted
14 you in January of 2012"?

15 **MR. LAFAYETTE:** Objection, question is argumentative,
16 lacking in foundation.

17 **THE COURT:** Overruled.

18 **THE WITNESS:** Can you repeat the question?

19 **BY MR. SIEGEL:**

20 **Q.** Sure. Isn't it true that in this evaluation, which is
21 marked as Plaintiff's Exhibit 12, you comment about your role
22 in promoting Ms. Preston and do it in the first person, that
23 is, use the word "I" to refer to yourself?

24 **A.** I did not.

25 **Q.** Okay. Would you look at page 2 of Exhibit 12? Are you

1 there?

2 A. I'm there.

3 Q. Do you see the box at the top of the page?

4 A. I do.

5 Q. Didn't you write, quote, "In January, I requested you take
6 over the responsibility of supervising the EOPD Unit. You
7 agreed, and immediately contacted staff to provide support and
8 supervision"?

9 A. I did not.

10 Q. You did not write that?

11 A. No.

12 Q. Did you ask someone to write it on your behalf and to
13 refer to you by use of the word "I"?

14 A. I don't recall.

15 Q. You don't recall; okay. Do you recall reading this
16 evaluation?

17 A. No.

18 Q. Do you recall that I asked you to read it during your
19 deposition?

20 A. Yes.

21 Q. And did you read it during your deposition?

22 A. I scanned it.

23 Q. Okay. And do you recall stating during your deposition
24 that there was no part of it that you disagreed with?

25 A. No.

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1 **MR. SIEGEL:** Okay. I'd like to refer to Ms. Santana's
2 deposition, page 106, Your Honor.

3 **THE COURT:** Line?

4 **MR. SIEGEL:** Page 105 -- sorry. Page 105,
5 line 12 through 106, line 6.

6 **MR. LAFAYETTE:** I'm sorry. 105?

7 **MR. SIEGEL:** Line 12.

8 **MR. LAFAYETTE:** Through?

9 **MR. SIEGEL:** 6:6.

10 **MR. LAFAYETTE:** I think it calls for speculation on
11 her part.

12 **THE COURT:** Mr. Siegel, what is your question that you
13 want to ask Ms. Santana about this?

14 **MR. SIEGEL:** That at her deposition she read the
15 evaluation and said there was nothing that she would have taken
16 out.

17 **THE COURT:** Why don't you ask that question? Where is
18 it in that section? You read a part of the deposition, you
19 read part of the evaluation and asked her about part of the
20 evaluation.

21 **MR. SIEGEL:** Oh, I see. You're referring to the
22 summary part. Okay. I can narrow it to that.

23 **Q.** Do you recall reading the summary part of the evaluation
24 and indicating that you would not have taken anything out of
25 it?

1 **MR. LAFAYETTE:** That misstates that.

2 **THE COURT:** Sustained. You're asking her to repeat
3 her deposition testimony.

4 **BY MR. SIEGEL:**

5 **Q.** Let me ask it the other way. Would you look at, again,
6 looking at Exhibit 12, the next -- the page that's Bates
7 stamped Oakland 1080, which states "overall evaluation," and
8 would you read that paragraph?

9 **A.** "Lawanna is a great asset --

10 **THE COURT:** Hold on a second. I apologize,
11 Ms. Santana. Read it to yourself first, because I don't know
12 if you wrote it, if you read it before.

13 **THE WITNESS:** Oh, I'm sorry.

14 **THE COURT:** First familiarize yourself with it. The
15 document itself is not in evidence.

16 **THE WITNESS:** (witness examines document) Okay.

17 **BY MR. SIEGEL:**

18 **Q.** Okay. Now, in May of 2012, does that paragraph reflect
19 your overall evaluation of Ms. Preston's performance?

20 **A.** I think it partially reflected her performance.

21 **Q.** Okay. Is there any part of that statement that you did
22 not believe to be true in May of 2012?

23 **A.** I would have made some changes to some of the language and
24 included a couple of additional summary statements.

25 **Q.** Okay. But my question is slightly different.

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1 Is there any part of it that you would not have believed
2 to be true in May of 2012?

3 **A.** I think for the most part I would have allowed for it to
4 go through, with the exception of adding some additional
5 statements.

6 **Q.** Okay. Would you kindly now read it out loud?

7 **A.** (reading) "Lawanna is a great asset to the City. Her
8 knowledge, skills, and abilities to provide needed leadership
9 in employee relations, NE OPD. She attempts to resolve
10 grievances at the lowest possible level. Lawanna has
11 established great working relationships with organized labor,
12 and demonstrates a high level of professionalism and integrity.
13 She provides excellent consultation to the City Attorneys, City
14 Administrator, and other management staff. Lawanna has
15 demonstrated extensive knowledge of legal standards and
16 guidelines governing employee relations and activities --
17 employee relations activities, legal and professional
18 standards, and procedures. Lawanna assigns, reviews,
19 participates in and coordinates the work of subordinate staff."

20 **Q.** Okay. Thank you. Now, Ms. Santana, in -- during 2012,
21 was one of the problems that you were dealing with problems
22 relating to the Rainbow Teen Center?

23 **A.** Yes.

24 **Q.** Okay. And in a nutshell, would it be fair to summarize
25 the problems being the fact that a member of the City Council

1 had undertaken to commission the renovation of the Center and
2 the hiring of staff to run the Center?

3 A. Yes.

4 Q. Okay. And that staff member was Desley Brooks; is that
5 right?

6 A. No.

7 Q. Who was --

8 A. Vice-Mayor Desley Brooks.

9 Q. Vice-Mayor, okay. She was a member of the City Council;
10 correct?

11 A. City Council, not staff.

12 Q. Okay. And Vice-Mayor Brooks was the Council member who
13 represented the area of East Oakland where the Rainbow Teen
14 Center was located?

15 A. Yes.

16 Q. And is it also true that in early 2012, you asked Fred
17 Blackwell and Lawanna Preston to review what had occurred
18 vis-a-vis the Rainbow Teen Center?

19 A. No.

20 Q. Did you not ask them to write a report about it?

21 A. It was late 2011.

22 Q. Okay. I see. You asked them to do it in late 2011, and
23 they ultimately presented a report to you in February of 2012;
24 is that correct?

25 A. Yes.

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1 **Q.** Okay. Would you look at Exhibit 8 in the binder in front
2 of you.

3 Do you recognize that document?

4 **A.** Yes.

5 **Q.** Is that the Agenda Report regarding the Rainbow Teen
6 Center dated February 24, 2012?

7 **A.** Yes.

8 **Q.** And it's signed by Lawanna Preston and Fred Blackwell?

9 **A.** (witness examines document) Yes.

10 **MR. SIEGEL:** Okay. Your Honor, I'd offer Exhibit 8.

11 **MR. LAFAYETTE:** I can't find Exhibit 8, Your Honor.
12 We're using a different number system. Could I take a look at
13 what Mr. Siegel has?

14 **MR. SIEGEL:** Sure. Also, it's not in your joint
15 binder, is the problem.

16 **THE COURT:** Is this not the same document as defense
17 Exhibit N or --

18 **MR. LAFAYETTE:** It is the same as -- I have it, and I
19 don't have an objection to it, Your Honor.

20 **THE COURT:** All right. With no objection, Plaintiff's
21 Exhibit 8 is admitted into evidence.

22 (Trial Exhibit 8 received in evidence)

23 **BY MR. SIEGEL:**

24 **Q.** Now, is it true, Ms. Santana, that prior to the
25 finalization of the report, there were various drafts of the

1 report that were produced and discussed by staff?

2 **A.** Yes.

3 **Q.** And did one of those drafts include suggestions by the
4 City Attorney?

5 **A.** Yes.

6 **Q.** And was one of the suggestions that the City Attorney put
7 into an earlier draft that Ms. Brooks be referred to the
8 Alameda County District Attorney for purposes of investigation
9 and potential prosecution?

10 **MR. LAFAYETTE:** Objection, Your Honor. It violates
11 the attorney-client privilege, Hall versus City.

12 **THE COURT:** Why is that not privileged?

13 **MR. SIEGEL:** Because it's a document that has been
14 made public in this litigation and elsewhere, and is subject to
15 much public conversation, and I have a copy of it, which was
16 not produced by the defendants in this case.

17 **MR. LAFAYETTE:** He's asking about a document -- a
18 conversation with the City Attorney.

19 **THE COURT:** All right. For now, the objection will be
20 sustained, and we'll take this up further before the witness
21 returns tomorrow.

22 **BY MR. SIEGEL:**

23 **Q.** Okay. Would you look at Exhibit 6. 6 is also Exhibit Q,
24 Mr. Lafayette.

25 Is Exhibit 6 a draft of Exhibit 8 that included

1 suggestions from various people, including the City Attorney?

2 **MR. LAFAYETTE:** Same objection, Your Honor,
3 attorney-client privilege.

4 **THE COURT:** Mr. Lafayette, on your Amended Joint Trial
5 Exhibit list, this document appears without objection.

6 **MR. LAFAYETTE:** And I have an objection, Your Honor.
7 My objection is the attorney-client privilege.

8 **THE COURT:** All right. That was waived on Saturday.
9 The objection is overruled. You may proceed.

10 **MR. SIEGEL:** Thank you.

11 **Q.** Is Exhibit 6 a draft report --

12 **A.** Yes.

13 **Q.** -- of the document that eventually became Exhibit 8; is
14 that right?

15 **A.** Yes.

16 **MR. SIEGEL:** Your Honor, I'd offer Exhibit 6.

17 **MR. LAFAYETTE:** Same objection, Your Honor, the
18 attorney-client privilege and relevance.

19 **THE COURT:** Overruled. Exhibit 6, which is the same
20 as Exhibit Q, is admitted.

21 (Trial Exhibit 6 received in evidence)

22 **BY MR. SIEGEL:**

23 **Q.** Would you look at page 16 of Exhibit 6.

24 Is the hard-to-read paragraph at the bottom of that page
25 suggested language from City Attorney Barbara Parker?

1 **MR. LAFAYETTE:** Objection, misstates the document.

2 It's argumentative as phrased.

3 **THE COURT:** Overruled. You can answer.

4 **THE WITNESS:** Yes.

5 **BY MR. SIEGEL:**

6 **Q.** And isn't it true that prior to the production of
7 Exhibit 6, you yourself had expressed an interest in whether
8 you had the authority to turn -- to refer Ms. Brooks to the
9 Alameda County District Attorney?

10 **MR. LAFAYETTE:** As phrased the question is ambiguous.

11 **THE COURT:** Overruled.

12 **THE WITNESS:** Can you repeat the question?

13 **BY MR. SIEGEL:**

14 **Q.** Yeah. Isn't it true that prior to Ms. Parker adding the
15 language we've just been discussing into Exhibit 6, you
16 yourself had expressed an interest on turning over the
17 investigation of Ms. Brooks to the District Attorney?

18 **MR. LAFAYETTE:** Same objection.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** No.

21 **BY MR. SIEGEL:**

22 **Q.** Okay. Would you look at Exhibit 7, please? And this is
23 also Exhibit O, letter O.

24 **THE COURT:** Thank you.

25 **MR. LAFAYETTE:** Same as defendant's what, counsel?

1 **MR. SIEGEL:** O, letter O.

2 **Q.** Is Exhibit 7 an email exchange between yourself and
3 Barbara Parker that you also shared with Fred Blackwell,
4 Lawanna Preston, Sabrina Landreth, Deborah Barnes, Alexandra
5 Orologas and Doryanna Moreno?

6 **A.** Yes.

7 **Q.** And isn't it true that you were asking the City Attorney
8 whether you had the authority to initiate an investigation of a
9 Council member?

10 **A.** Yes.

11 **MR. SIEGEL:** Your Honor, I'd offer Exhibit 7.

12 **MR. LAFAYETTE:** Same objection on privilege, Your
13 Honor.

14 **THE COURT:** Overruled. See document 137. Exhibit 7
15 is admitted into evidence.

16 (Trial Exhibit 7 received in evidence)

17 **MR. SIEGEL:** Thank you.

18 **Q.** So if I could just read part of this, Your Honor.

19 On Monday, February 20, 2012, you wrote a memo to the City
20 Attorney Barbara Parker and others in which you asked the
21 question: Quote, "Do I have the authority to initiate an
22 investigation on a Council member, or does the City Council
23 need to put this in place?" You wrote that; correct?

24 **A.** Yes.

25 **Q.** And you wrote that because you wanted to have the Alameda

1 County DA investigate whether Council member Desley Brooks had
2 committed a violation of the City charter; correct?

3 **MR. LAFAYETTE:** Objection, it's argumentative as
4 phrased.

5 **THE COURT:** Overruled.

6 **THE WITNESS:** No.

7 **BY MR. SIEGEL:**

8 **Q.** Okay. So you didn't want to have the District Attorney
9 investigate Desley Brooks?

10 **A.** The -- they may have already been concurrently looking
11 into it. I know the FBI was already looking into it.

12 **Q.** And you know that because Howard Jordan told you; correct?

13 **A.** No.

14 **Q.** How do you know that?

15 **A.** I was -- I had provided information to the FBI on their
16 inquiry.

17 **Q.** So you had provided information to the FBI to help them
18 conduct an investigation of Desley Brooks?

19 **A.** Yes.

20 **Q.** And I assume that you wanted them to conduct that
21 investigation; correct?

22 **A.** I was responding to an information request from the FBI.

23 **Q.** So the FBI asked you whether Desley Brooks had committed
24 some type of crime?

25 **A.** They were inquiring about the media articles and

1 requesting information.

2 Q. Okay. And would it be fair to say that as of
3 February 2012, you had a very poor relationship with Desley
4 Brooks?

5 A. No.

6 Q. Would you say you had a good relationship with her?

7 A. We had a working relationship.

8 Q. That was -- you didn't have a choice in that; right? She
9 was on the City Council, and you were the City Administrator?

10 A. We were transacting, and we were -- I was responsive to
11 her inquiries and to her requests.

12 Q. Would it be fair to say that your interactions were
13 sometimes hostile?

14 MR. LAFAYETTE: Objection, question is vague and
15 ambiguous and not relevant.

16 THE COURT: Overruled.

17 THE WITNESS: Not until January 2012.

18 BY MR. SIEGEL:

19 Q. Okay. Well, when was it that you turned over information
20 about her to the FBI?

21 A. During the winter of 11/12.

22 Q. Okay. Getting back to the report.

23 When Exhibit 6 was drafted, that is the version of the
24 final report that included Ms. Parker's comments, isn't it true
25 that you had a conversation about whether the language -- about

1 turning over Ms. Brooks to the DA with Lawanna Preston?

2 **A.** Yes.

3 **Q.** And isn't it true that Lawanna Preston did not want to see
4 the language suggested by Barbara Parker included in that
5 report?

6 **MR. LAFAYETTE:** Objection, it's misstating the
7 language in the document, and that makes it argumentative.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** We both did not.

10 **BY MR. SIEGEL:**

11 **Q.** Okay. So she didn't want it in there, and you agreed with
12 her, you didn't want it in there either?

13 **A.** We both did not want it in there.

14 **Q.** Okay. So the language was taken out?

15 **A.** Yes.

16 **Q.** Okay. And the report then proceeded; correct?

17 **A.** Yes.

18 **Q.** And there was then a meeting of the Oakland City Council
19 on March the 6th, 2012; is that right?

20 **A.** Yes.

21 **Q.** And was that the meeting at which the February 24 final
22 report was presented to the Council?

23 **A.** Yes.

24 **Q.** And there was also an open session of the City Council on
25 that date; is that right?

1 **A.** Yes.

2 **Q.** There was a public session and a closed session?

3 **A.** Yes.

4 **Q.** Okay. And at the public session, there were scores of
5 people there who wanted to be heard on the issue of the Rainbow
6 Teen Center; is that right?

7 **A.** Yes.

8 **Q.** And would it be fair to say that the people who spoke at
9 the Council meeting had different opinions about the Rainbow
10 Teen Center?

11 **A.** Yes.

12 **Q.** Some of them praised Desley Brooks for getting this Center
13 open in a community that needed its services; is that right?

14 **A.** Yes.

15 **Q.** And some of them criticized her because she had bypassed
16 normal City Council proceedings, or excuse me, normal City
17 proceedings to authorize Pulte to fix up the Center and also to
18 hire staff?

19 **A.** Yes.

20 **Q.** Okay. And, in fact, in the February 24 report, that was
21 prepared by Mr. Blackwell and Ms. Preston, they outlined the
22 departures from normal City practice and policy that Ms. Brooks
23 had got into; is that right?

24 **A.** Yes.

25 **Q.** Okay. So it wouldn't be fair to say that even Mr. --

1 either Mr. Blackwell or Ms. Preston was attempting to excuse
2 Ms. Brooks' actions?

3 **MR. LAFAYETTE:** Objection. It requires speculation
4 for her part, assumption and opinion.

5 **THE COURT:** Sustained. And the question was also
6 compound and incomplete, so can you rephrase it to be clear
7 what you're asking?

8 **BY MR. SIEGEL:**

9 **Q.** Okay. Did you approve the final version of the report
10 that was presented or signed by Blackwell and Preston?

11 **A.** Yes.

12 **Q.** Okay. So we don't need to go into it.

13 Now, also at that meeting there was an issue that arose
14 when you and Ms. Brooks disagreed about what information had
15 been provided to Ms. Brooks regarding the staffing of the
16 Rainbow Teen Center; correct?

17 **MR. LAFAYETTE:** Objection, Your Honor. I think this
18 was one of your motions in limine.

19 **THE COURT:** Which one?

20 **MR. LAFAYETTE:** The one related to questioning people
21 about what's on the videotape.

22 **THE COURT:** Overruled.

23 **BY MR. SIEGEL:**

24 **Q.** Do you remember the question?

25 **A.** I don't.

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1 **Q.** Okay. You and Ms. Brooks had a disagreement, at the
2 March 6th meeting, about what information had been given to
3 Ms. Brooks regarding the staffing of the Rainbow Teen Center?

4 **A.** Yes.

5 **Q.** Okay. And after that disagreement proceeded for a minute
6 or two minutes, you asked Ms. Preston and Fred Blackwell to
7 come to the podium and confirm your recollection of what had
8 occurred?

9 **A.** Yes.

10 **Q.** And Ms. Preston --

11 **THE COURT:** Let me pause for a moment. So there's a
12 videotape of this incident; correct?

13 **MR. SIEGEL:** In part, yes.

14 **THE COURT:** And are you going to show it?

15 **MR. SIEGEL:** Yes.

16 **THE COURT:** All right. Then show it rather than have
17 her say what's in it. Choose one or the other.

18 **MR. SIEGEL:** Okay. All right. Then I will put that
19 aside. I'm not going to show her right now.

20 **Q.** After the meeting on March the 6th, did Ms. Preston
21 apologize to you for the statements that she had made at the
22 March 6th meeting?

23 **A.** Yes.

24 **Q.** Okay. And you, in effect, said no apology was necessary,
25 because, in your view, you and Ms. Preston had agreed as to

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1 what occurred at the meeting?

2 **MR. LAFAYETTE:** Objection, best evidence.

3 **MR. SIEGEL:** No, this is not --

4 **THE COURT:** Overruled.

5 **THE WITNESS:** Yes.

6 **BY MR. SIEGEL:**

7 **Q.** Okay. Now, is it fair to say that this incident, that is
8 on the -- regarding the report and the March 6th meeting,
9 represented a turning point in your relationship with
10 Ms. Preston?

11 **A.** No.

12 **Q.** Okay. Would you agree that your relationship up until
13 March the 6th, 2012 was a positive relationship?

14 **A.** Yes.

15 **Q.** And after that, it wasn't so positive anymore; correct?

16 **A.** No.

17 **Q.** Did it continue to be positive?

18 **A.** Yes.

19 **Q.** How long did it continue to be positive?

20 **A.** Through about December to January, 2012-'13, the end of
21 the year.

22 **Q.** So -- and would it be fair to say that at no time during
23 calendar year 2000 did you ever give Ms. Preston a reprimand?

24 **A.** Yes.

25 **Q.** And at no time during calendar year 2000 did you ever

1 memorialize in writing --

2 **THE COURT:** You mean 2000, is that what you said.

3 **MR. SIEGEL:** Through 2012. Did I misspeak?

4 **THE COURT:** I just heard you say 2000, so --

5 **MR. SIEGEL:** Sorry. Thank you.

6 **Q.** Would it be fair to say that at no time through the end of
7 2012, did you memorialize any criticism, negative criticism of
8 Ms. Preston's job performance?

9 **A.** I think I sent some emails.

10 **Q.** During 2012.

11 **A.** I think I sent emails -- I may have sent emails or
12 directed staff to send emails.

13 **Q.** To her?

14 **A.** Yes.

15 **Q.** That critiqued her job performance?

16 **A.** Yes.

17 **Q.** And can you identify those emails at this time?

18 **A.** There were -- there were issues with closed session
19 procedures being followed, and there's emails that instruct her
20 on closed session procedures, and that's what's coming to mind
21 right now.

22 **Q.** Okay. So then are you saying that your relationship with
23 her at the time those emails were written regarding closed
24 session procedures was no longer positive?

25 **A.** I think we were just working together.

1 Q. Just trying to work out the process?

2 A. Right.

3 Q. Okay. All right. So in early 2013, an issue arose
4 regarding the negotiations between the City of Oakland and the
5 Firefighters Local 55; is that right?

6 A. Yes.

7 Q. Okay. And at that point, the chief of the Oakland Fire
8 Department was an individual by the name of Teresa Reed; is
9 that right?

10 A. Yes.

11 Q. And Teresa Reed is someone with whom you had worked in the
12 City of San Jose?

13 A. Yes.

14 Q. And were you responsible within the City of Oakland for
15 hiring Teresa Reed as the fire chief?

16 A. Yes.

17 Q. Okay. And I take it you were supportive of her role as
18 fire chief?

19 A. Yes.

20 Q. The City of Oakland had a policy that prior to proposals
21 being made to union-represented city employees, those proposals
22 had to be vetted and approved by the City Council; is that
23 right?

24 A. Yes.

25 Q. Okay. And you learned, did you not, that Teresa Reed had

1 violated that policy by reaching agreements with the
2 Firefighters Union, also known as Local 55?

3 **MR. LAFAYETTE:** Objection, argumentative, and calling
4 for an opinion as framed.

5 **THE COURT:** Overruled.

6 **THE WITNESS:** That's what I read.

7 **BY MR. SIEGEL:**

8 **Q.** Okay. And where did you read that?

9 **A.** In an email from Doryanna Moreno and the Attorney's
10 Office.

11 **Q.** Okay. Now, you spoke with Chief Reed about this matter;
12 is that right?

13 **A.** Yes.

14 **Q.** Okay. And isn't it in fact true that in your conversation
15 with Chief Reed, she indicated that the reason she had
16 negotiated and reached this agreement with the Local 55 was
17 that you told her to do that?

18 **MR. LAFAYETTE:** Objection, constitutes hearsay.

19 **THE COURT:** What's the purpose of the question, truth
20 or something else?

21 **MR. SIEGEL:** It is to demonstrate the existence of a
22 disagreement between Ms. Santana and Ms. Reed.

23 **MR. LAFAYETTE:** Objection, relevance.

24 **THE COURT:** Hearsay objection is sustained.
25

1 **BY MR. SIEGEL:**

2 **Q.** Let me approach this a different way.

3 Isn't it true that you criticized Lawanna Preston and
4 people on her staff for allowing Chief Reed to negotiate with
5 the Firefighters Union without getting City Council approval?

6 **A.** I don't think so.

7 **Q.** Well, isn't it true that you -- that one of the reasons
8 that you ultimately made the decision to fire Ms. Preston was
9 because of her failing to give appropriate guidance to Chief
10 Reed in allowing therefor Chief Reed to violate City policy?

11 **A.** Yes.

12 **Q.** Okay. So you felt that there was a violation of City
13 policy, and you thought that Lawanna Preston and her staff was
14 responsible for it?

15 **A.** I thought that Lawanna had failed us in guiding the
16 process.

17 **Q.** Okay. And did you speak with Chief Reed about that?

18 **A.** I don't recall.

19 **Q.** Let me ask you this. Is it true that Chief Reed did not
20 criticize Lawanna Preston and instead indicated that the
21 problem was your fault, because you had advised Chief Reed to
22 go ahead and have these negotiations?

23 **MR. LAFAYETTE:** Objection, compound, constitutes
24 hearsay, relevancy.

25 **THE COURT:** Hearsay and compound objections are

1 sustained.

2 **BY MR. SIEGEL:**

3 **Q.** Okay. Isn't it true that one of the reasons that you
4 fired Lawanna Preston was because of the incident with Chief
5 Reed negotiating with Local 55 without City Council approval?

6 **MR. LAFAYETTE:** Objection, it's cumulative.

7 **THE COURT:** Overruled.

8 **THE WITNESS:** I thought Employee Relations had failed
9 the City with providing proper guidance.

10 **BY MR. SIEGEL:**

11 **Q.** Okay. And isn't that one of the reasons for your decision
12 to fire Lawanna Preston in October?

13 **A.** Yes.

14 **Q.** Okay. And do you recall having a conversation with the
15 chief about how it came to be that she negotiated with Local 55
16 without Council approval?

17 **A.** I think there were email transactions.

18 **Q.** Okay. And isn't it true that in your transactions with
19 Chief Reed, she did not blame Lawanna Preston, but instead she
20 blamed you?

21 **MR. LAFAYETTE:** Objection, hearsay, and the documents
22 are their own best evidence.

23 **THE COURT:** Sustained. Hearsay objection sustained.

24 **BY MR. SIEGEL:**

25 **Q.** Okay. All right. In any case, was it an embarrassment to

1 the City that an agreement had been made with Local 55 without
2 City Council approval?

3 **MR. LAFAYETTE:** Objection, requires speculation on the
4 part of the witness.

5 **THE COURT:** Sustained.

6 **BY MR. SIEGEL:**

7 **Q.** Was it an embarrassment to you as City Administrator that
8 your fire chief had made an agreement with Local 55 without
9 your approval?

10 **A.** No.

11 **Q.** Do you think this reflected badly on your administration?

12 **MR. LAFAYETTE:** Objection, requires her to speculate.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** I thought it just needed to be cleaned
15 up.

16 **BY MR. SIEGEL:**

17 **Q.** Well, it's true, isn't it, that Local 55 had to be advised
18 that the agreement that Chief Reed had made on June 28th, 2013
19 had to be retracted?

20 **MR. LAFAYETTE:** Objection, lacking in foundation,
21 constitutes hearsay.

22 **THE COURT:** Sustained. One moment. Let me advise the
23 jury.

24 There have been a number of objections, I warned you about
25 those, and I've sustained a number of them, and therefore the

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1 witness is not allowed to answer them, and to remind you,
2 you're not to speculate what the answer would have been if I
3 had allowed the question.

4 The hearsay objection goes to statements made by someone
5 who is not here in court. So there have been references to
6 Chief Reed, who is not here in court, and what Chief Reed said
7 or wrote. And Chief Reed can be called as a witness in this
8 case, and can be asked what Chief Reed said or wrote, and
9 that's a more direct way of getting information for you to
10 consider, rather than asking a witness here to state what
11 another person said who is not here.

12 The reason for the rule is that since that person is not
13 here to be challenged about what he or she said, it's not as
14 reliable as information -- as asking the person who is here,
15 Ms. Santana, what Ms. Santana said or did. So the purpose of
16 the rule is to get more direct information for the jury to
17 consider. You may proceed.

18 **MR. SIEGEL:** Thank you.

19 **Q.** Isn't it true that members of Local 55 complained to you
20 about what had occurred with the agreement being reached on
21 June 28 and then having to be withdrawn?

22 **A.** Yes.

23 **Q.** Okay. And wasn't that a problem for you?

24 **MR. LAFAYETTE:** Objection, it's vague and ambiguous as
25 phrased.

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1 **THE COURT:** Overruled.

2 **THE WITNESS:** It was correctable.

3 **BY MR. SIEGEL:**

4 **Q.** And, in fact, it was corrected?

5 **A.** Yes.

6 **Q.** You went back to the City Council in July, and they said,
7 *Okay, we'll approve this agreement retroactively?*

8 **A.** Yes.

9 **Q.** That's what happened; right?

10 **A.** Yes.

11 **Q.** Okay. And just to clean up one point, did Chief Reed
12 complain to you about Ms. Preston's job performance?

13 **A.** She expressed that she was confused.

14 **Q.** Okay. But did she explain to you about Ms. Preston's job
15 performance?

16 **A.** I don't recall.

17 **MR. SIEGEL:** Your Honor, Ms. Santana's deposition at
18 page 83, lines 2 through 4.

19 **THE COURT:** One moment.

20 **MR. LAFAYETTE:** Which page, counsel?

21 **MR. SIEGEL:** 83, lines 2 to 4.

22 **THE COURT:** All right. You can read that.

23 **MR. SIEGEL:** Thank you.

24 **Q.** Was she, referring to Chief Reed, one of the
25 individuals who complained to you about Ms. Preston's

1 behavior or job performance?

2 "A. I don't think so."

3 Q. Now, did an issue arise in 2013 concerning whether Deb
4 Grant, an employee of the Human Resources Department, had
5 improperly ordered some computer equipment for herself and for
6 her staff?

7 A. Yes.

8 Q. Okay. And was that investigation referred by you -- let
9 me rephrase that.

10 Did you refer that matter for investigation to the
11 Internal Affairs Department of the Oakland Police Department?

12 A. I referred it to two places, the City Auditor, and to the
13 Internal Affairs Department.

14 Q. Okay. And that's part of the Oakland Police Department?

15 A. Yes.

16 Q. Okay. And isn't it true that that was a unique event in
17 terms of your administration, that is, the referral to the
18 Internal Affairs Department of the Police Department of a
19 matter involving the behavior of an employee who was not an
20 employee of the Police Department?

21 A. Yes.

22 Q. Okay. And prior to referring this matter to the Internal
23 Affairs Department of OPD, did you consult with Chief Howard
24 Jordan?

25 A. I don't remember if it was Chief Howard Jordan or Chief

1 Sean Whent. It may have been both. Chief Howard Jordan was
2 transitioning out, and Chief Sean Whent was transitioning in.

3 Q. Okay. When did Chief Howard Jordan leave the City of
4 Oakland?

5 A. Early 2013.

6 Q. Okay. And isn't it in fact true that even after Chief
7 Jordan left the Oakland Police Department, you considered to
8 consult with him?

9 A. I'm sorry. Repeat the question.

10 Q. Didn't you continue to consult with Howard Jordan after he
11 left employment with the City of Oakland?

12 A. Yes.

13 Q. You and he had developed a friendship?

14 A. Yes.

15 Q. Okay. And isn't it true that he is the one who
16 recommended to you that you use Internal Affairs to investigate
17 the matter of the computers that were ordered by Deb Grant in
18 the Human Resources Department?

19 A. He may have, but I tend to remember Chief Sean Whent more
20 active in implementing it.

21 Q. Okay. In any case, the Internal Affairs division of the
22 Police Department investigated the actions of Deb Grant; is
23 that right?

24 A. That's correct.

25 Q. And they also investigated at your request the actions of

1 Lawanna Preston to determine whether she had improperly
2 interfered with the investigation of Deb Grant; is that right?

3 **A.** Yes.

4 **Q.** And isn't it also true that at the conclusion of that
5 investigation, they did not recommend to you grounds for
6 disciplinary action against either Deb Grant or Lawanna
7 Preston?

8 **A.** No.

9 **Q.** Am I correct?

10 **A.** That wasn't their role.

11 **Q.** What was their role?

12 **A.** To conduct an investigation and make findings.

13 **Q.** Okay. And did they make findings that led to the
14 discipline of Deb Grant?

15 **MR. LAFAYETTE:** Objection, relevancy, and Ms. Grant's
16 right to privacy.

17 **THE COURT:** Overruled. You may answer.

18 **THE WITNESS:** Can you repeat the question?

19 **BY MR. SIEGEL:**

20 **Q.** Isn't it true that the findings made by Internal Affairs
21 did not lead to any disciplinary action taken against Deb
22 Grant?

23 **A.** I don't know.

24 **Q.** You don't know?

25 **A.** I don't know.

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1 **Q.** Okay. Did you discipline Deb Grant as a result of the IA
2 investigation?

3 **A.** I did not.

4 **Q.** Did anyone?

5 **A.** I don't know.

6 **Q.** Okay. Well, did the findings of the Internal Affairs
7 division of the Police Department lead to any disciplinary
8 action taken against Lawanna Preston?

9 **A.** It was one of the reasons why I chose to terminate.

10 **MR. SIEGEL:** Your Honor, I'd like to read
11 Ms. Santana's deposition, page 22, lines 3 through 23.

12 **THE COURT:** And how does it differ from what you just
13 covered? Or what -- how is it not cumulative to what you just
14 discussed?

15 **MR. SIEGEL:** The deposition testimony was that there
16 was no disciplinary action taken against either Deb Grant or
17 Lawanna Preston.

18 **THE COURT:** In one place you asked "did you," and the
19 other one the question was "was any action taken," so you asked
20 different questions at deposition than here. Do you want to
21 clarify here?

22 **BY MR. SIEGEL:**

23 **Q.** Okay. Were you aware of any disciplinary action taken
24 against Deb Grant as a result of her -- the allegation that she
25 had improperly attempted to procure computer equipment?

1 **A.** I am not.

2 **Q.** You're not aware of any; correct?

3 **A.** Right.

4 **Q.** And no disciplinary action was taken against Lawanna
5 Preston; is that right?

6 **A.** It was one of the reasons why I terminated her.

7 **MR. SIEGEL:** Your Honor, again, looking at
8 lines 19 through 23.

9 **THE COURT:** I think she just clarified it right now.
10 You got her to say the same thing as what she said during the
11 deposition.

12 **MR. SIEGEL:** She said "no" in the deposition.

13 **THE COURT:** And she just said "no" to disciplinary
14 action here as well.

15 **MR. SIEGEL:** No, she said, *That was one of the reasons*
16 *I terminated her.*

17 **THE COURT:** That's a different question.

18 **MR. SIEGEL:** Okay. All right.

19 **Q.** Isn't it true that no disciplinary action was taken
20 against Lawanna Preston as a result of the Internal Affairs
21 investigation?

22 **A.** Yes.

23 **Q.** You said there was disciplinary action taken against her
24 as a result of the Internal Affairs investigation?

25 **A.** It's one of the reasons why I terminated her.

1 **THE COURT:** If you want to read your question and
2 answer, you can. I think you're perhaps confusing the jury
3 more with the contrast. I'm not trying to contribute to their
4 confusion, but if you think it's helpful...

5 **MR. SIEGEL:** I apologize if I'm confusing anyone. The
6 testimony on lines 23 -- excuse me, 19 to 23 of the deposition
7 was:

8 **"Q.** And was any disciplinary action taken against Lawanna
9 Preston as a result of her involvement in that
10 investigation or her allegation that she had interfered
11 with the investigation?

12 **"A.** No."

13 **Q.** Now, do you recall when the Internal Affairs Department
14 completed its investigation of the Deb Grant and Lawanna
15 Preston matter?

16 **A.** Yes.

17 **Q.** When was that?

18 **A.** Late September.

19 **Q.** Late September; okay. So this was going on concurrently
20 with the conversations regarding the grievance filed by SEIU
21 concerning the dues collection for temporary part-time
22 employees?

23 **A.** Yes.

24 **Q.** Okay. And how did you learn that -- well, let me rephrase
25 that.

1 Did you learn that at a meeting involving representatives
2 of the Employee Relations Department and the SEIU, that Katano
3 Kasaine had made a statement to the effect that dues were not
4 being collected from the temporary part-time employees?

5 **A.** Yes.

6 **Q.** Okay. And how did you learn that?

7 **A.** I think Lawanna called me.

8 **Q.** Okay. And was that a concern to you?

9 **A.** Yes.

10 **Q.** Did you realize that there was potentially a violation of
11 the agreement between SEIU, Local 1021, and the City of
12 Oakland?

13 **A.** Yes.

14 **Q.** And also a violation of state law, if the allegation is
15 true?

16 **A.** Yes.

17 **MR. LAFAYETTE:** Objection, calls for a legal
18 conclusion.

19 **THE COURT:** Overruled. The answer is "yes."

20 **THE WITNESS:** Yes.

21 **THE COURT:** Okay.

22 **BY MR. SIEGEL:**

23 **Q.** Now, when Lawanna Preston told you that she was going to
24 investigate the grievance that SEIU had filed, did you
25 determine to remove authority for that investigation from her?

1 **A.** Yes.

2 **Q.** Okay. And did you then ask the City Attorney to take
3 responsibility for that investigation?

4 **A.** No.

5 **Q.** Who did you ask to take responsibility, if anyone?

6 **A.** I asked the City Attorney to help me get a third-party
7 investigator.

8 **Q.** Okay. And did the City Attorney do that?

9 **A.** Yes.

10 **Q.** And who did the City Attorney find to act as a third-party
11 investigator?

12 **A.** Mr. Otis McGee.

13 **Q.** And Mr. McGee is an attorney; is that correct?

14 **A.** Yes.

15 **Q.** And he is currently employed by the Oakland City
16 Attorney's Office; is that right?

17 **MR. LAFAYETTE:** Objection, hearsay, lacking in
18 foundation.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** Yes.

21 **BY MR. SIEGEL:**

22 **Q.** Okay. In fact, you were present at the deposition of
23 Lawanna Preston in this case; weren't you?

24 **A.** Yes.

25 **Q.** And it was Mr. McGee who took her deposition; is that

1 right?

2 **MR. LAFAYETTE:** Objection, relevance, Your Honor.

3 **THE COURT:** Sustained.

4 **BY MR. SIEGEL:**

5 **Q.** Okay. To your knowledge, Mr. McGee served as counsel for
6 you in this case?

7 **MR. LAFAYETTE:** Objection, relevance, Your Honor.

8 **THE COURT:** Sustained. Let's move on to a different
9 topic.

10 **MR. SIEGEL:** Okay.

11 **Q.** Did Lawanna Preston disagree with your decision to take
12 away responsibility for the investigation of the SEIU dues
13 issue? Did she complain about that to you?

14 **A.** Yes.

15 **Q.** Okay. And when did she do that?

16 **A.** Multiple times.

17 **Q.** Okay. Did she do that in writing or orally or both?

18 **A.** Both.

19 **Q.** Okay. And nonetheless, you decided to do that; is that
20 right?

21 **A.** Yes.

22 **Q.** Now, was there an incident at a meeting of the City
23 Council on October 1, 2013 where SEIU negotiations were being
24 discussed by the Council in closed session?

25 **A.** Yes.

1 Q. Okay. And were you present?

2 A. Yes.

3 Q. And was Lawanna Preston present?

4 A. Yes.

5 Q. And just to be clear, what was on the agenda was not a
6 discussion of the grievance, but was a discussion of the
7 negotiations between the City and the SEIU?

8 A. Yes.

9 Q. And is it also true that the City Council had before it at
10 that closed session meeting the proposals that had been
11 advanced by both sides in the negotiation?

12 A. Yes.

13 Q. So what we're talking about is that the City put its
14 proposals in writing, and the SEIU put its proposals in
15 writing?

16 A. Yes.

17 Q. Okay. And isn't it true that the proposals of the SEIU
18 included a statement to the effect that by proposing various
19 items to settle the contract, they were not proposing to
20 withdraw the grievance they had filed over the failure to
21 deduct dues?

22 A. I don't recall.

23 Q. Okay. Is it true that prior to the October 1 meeting, you
24 had instructed Lawanna Preston not to bring up the SEIU
25 grievance?

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1 **A.** No.

2 **Q.** Had you discussed it with Lawanna prior to that meeting?

3 **A.** Yes.

4 **Q.** And what had you discussed with her?

5 **A.** We talked about my decision to have a third-party
6 investigator. We talked about the transition of documents and
7 just going forward with the information that we had.

8 **Q.** Okay. The grievance had been filed early September;
9 correct?

10 **A.** Yes.

11 **Q.** Okay. Had you planned to have it discussed at the City
12 Council meeting on October 1?

13 **A.** I assumed it would come up.

14 **Q.** Okay. How did you assume that or why did you assume that?

15 **A.** I thought it would either be raised as a question or that
16 Lawanna would raise it, or that there was enough communication
17 between SEIU and Council members that they likely may even.

18 **Q.** Okay. Did you have any conversation with Lawanna Preston
19 regarding whether she should bring up the grievance in the
20 meeting with the City Council on October 1?

21 **A.** I don't recall telling her not to bring it up.

22 **Q.** Okay. Did she bring it up?

23 **A.** I think she did.

24 **Q.** Okay. And did she bring it up in response to a question
25 from a member of the Council?

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1 A. I don't recall.

2 Q. Okay. Do you recall how it came up during the meeting?

3 A. I recall that Lawanna made reference to it, Vice-Mayor or
4 Councilmen Brooks asked questions, and we responded to those
5 questions.

6 Q. Were you unhappy that Lawanna had brought up the grievance
7 during the closed session of the City Council on October 1?

8 A. I wasn't surprised.

9 Q. Okay. You weren't -- were you displeased, I guess is the
10 better question?

11 A. It wasn't something that would generally come up in a
12 closed session hearing.

13 Q. Okay. So you were neither pleased nor displeased?

14 A. I think it was just reflective of a pattern of behavior
15 that I had become accustomed to --

16 Q. Okay.

17 A. -- from Lawanna.

18 Q. When she brought things up to the Council without
19 authority; is that what you mean?

20 A. She would submit reports to Council members without my
21 opportunity to review, without the City Attorney's opportunity
22 to review, and this was reflective of that pattern of behavior.

23 Q. Wasn't it Lawanna Preston's responsibility to keep the
24 City Council apprized of the status of labor negotiations?

25 A. Yes.

1 Q. And didn't that responsibility sometimes arise outside of
2 the normal preparation of reports in advance of City Council
3 meetings?

4 MR. LAFAYETTE: Objection, requires speculation on
5 this witness's part.

6 THE COURT: Overruled.

7 THE WITNESS: Can you repeat the question?

8 BY MR. SIEGEL:

9 Q. Yeah. Didn't it sometimes occur that the press of
10 business would require a report to the Council on labor
11 negotiations more quickly than the normal process of preparing
12 reports for the Council?

13 A. Yes.

14 Q. Okay. Now, you thought that when Lawanna provided
15 information regarding the SEIU grievance during the October 1
16 meeting, she was acting outside of protocol; is that right?

17 A. By that time she had already been removed, and I had the
18 information in terms of the status of the topic.

19 Q. So my question, I repeat, do you think that she was acting
20 outside of the protocol when she provided the information to
21 the Council on October 1?

22 A. Yes.

23 Q. Okay.

24 THE COURT: Mr. Siegel, we're very close to the end
25 for today, and if you have some further questions, you can ask

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1 a few more.

2 **BY MR. SIEGEL:**

3 **Q.** Okay. And you decided to terminate Ms. Preston's
4 employment on October 2; correct?

5 **A.** Yes.

6 **Q.** And that occurred in part because she called you on the
7 telephone and essentially yelled at you while you were having a
8 meeting with Otis McGee and Barbara Parker?

9 **A.** I had already determined that I was going to terminate her
10 beforehand, and the letter was going to be issued either that
11 Friday or Monday, and after she yelled at me and was
12 insubordinate, I made the decision to terminate her the next
13 day.

14 **Q.** Okay. And you made that decision on October 2; correct?

15 **A.** To issue her the letter on Thursday.

16 **Q.** And at the time that she yelled at you, you were in a
17 meeting with Barbara Parker and Otis McGee; is that correct?

18 **A.** Yes.

19 **Q.** And Ms. Preston was on speakerphone?

20 **A.** Yes.

21 **MR. SIEGEL:** That's a good time to stop.

22 **THE COURT:** Thank you very much, Ms. Santana. You may
23 step down.

24 And ladies and gentlemen of the jury, that completes your
25 day of service. Thank you for your endurance today. We'll

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1 resume tomorrow at 9:00 a.m., and we'll have some business to
2 go over before then.

3 You can, of course, leave your notes, and you're
4 instructed to leave your notes, in the jury room.

5 I remind you of the admonishment I gave you earlier today
6 about not doing any research of your own in the case, only
7 consider the evidence presented in court, and not talk to
8 anyone about the case while it's ongoing. So remember those
9 admonishments.

10 There will be lots of traffic tomorrow. The
11 Salesforce.com Conference kicks off tomorrow, as well as the
12 usual traffic in San Francisco, so BART is an excellent option,
13 and allow extra time for travel. Thanks very much.

14 (Proceedings were heard out of presence of the jury:)

15 **MR. LAFAYETTE:** I would like, Your Honor, to get --

16 **THE COURT:** Back on the record.

17 Please be seated out there. Jurors are not present.

18 All right. A few administrative issues, and then we'll
19 get ready for tomorrow.

20 Mr. Siegel, when you review the transcript, you'll see
21 conservatively more than 50 times you say the word "okay" after
22 you hear an answer that you seem to agree with, and that's a
23 form of vouching for the witness and agreeing with the witness,
24 and testifying to the jury. You should not do that, because
25 you're not a witness. And if you keep doing it, I'll remind

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1 the jury that you're a witness, and they should give no credit
2 to your agreement of this agreement. You, of course, can
3 disagree with your arguments --

4 **MR. SIEGEL:** I understand. I wasn't even conscious of
5 it.

6 **THE COURT:** It's a common thing in questioning. But
7 when you review the transcript, you'll see that every time. So
8 see if you can work on that tomorrow with your further
9 examination.

10 Let's talk about the documents. So Mr. Lafayette, you
11 made an objection to a document that appears in what you
12 submitted in your Amended Joint Exhibit list on Saturday,
13 document 137, and in that document there are a number of
14 defense objections to other documents. There's no defense
15 objection to that document, which was Exhibit Q. So I'll give
16 you a chance to elaborate on why I should not be giving credit
17 to what the defense filed as its exhibit list with objections
18 on Saturday.

19 **MR. LAFAYETTE:** It was an inadvertent -- it was
20 inadvertence, Your Honor, because when I look at the document,
21 you really can't see it very clearly, but when you see it, it's
22 not an insert of language in the document, it's really an
23 opinion that's given. It's -- so that was the nature of also
24 my objection to mischaracterizing the document and
25 argumentative, because when you read the language that he's

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1 looking at, it's not saying add this language, it's actually
2 giving opinion and asking a question or saying this is what you
3 can do, and these are your options. And that was the nature of
4 my objection to his question, and that's why I'm saying it's
5 the appearance of the document.

6 **THE COURT:** All right. Those are all objections that
7 could have been made earlier and weren't. I'll give you a
8 chance until 8:00 a.m. tomorrow to revise this exhibit list and
9 to not call it an Amended Joint Trial Exhibit list unless it
10 actually is joint, and it's not an opportunity to add exhibits.

11 **MR. LAFAYETTE:** No.

12 **THE COURT:** But if there are objections which you
13 failed to make inadvertently on Saturday, I'll give you until
14 8:00 a.m. tomorrow to put the objections in writing. I'm not
15 promising I will sustain the objections, but I'll give you an
16 opportunity to raise them.

17 **MR. LAFAYETTE:** Thank you, Your Honor.

18 **MR. SIEGEL:** Your Honor, can I say something about
19 that?

20 **THE COURT:** You may.

21 **MR. SIEGEL:** It's not that the objections weren't made
22 on Saturday, they weren't made in the last version of the Joint
23 Exhibit List or when these documents were used at deposition or
24 in the motion for summary judgment or ever.

25 **MR. LAFAYETTE:** I don't think that document was used

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1 in deposition. I could be wrong.

2 **THE COURT:** Defendants need to speak in the microphone
3 so we actually have a recording that they make.

4 **MR. LAFAYETTE:** Thank you, Your Honor. I don't
5 believe that either of those documents were used in a
6 deposition, I could be wrong, but that's my recollection.

7 **THE COURT:** All right. I can't resolve that question
8 right now.

9 There were also plaintiff's exhibits identified in docket
10 120, and that's a binder I have before me. There's a column
11 for stipulations, objections, and it doesn't reflect any
12 objections or stipulations. So my question to the defense is
13 do you object to these documents? Of course I just admitted a
14 handful of them, but I imagine there's going to be more coming
15 tomorrow and the day after. So am I going to be guessing in
16 front of the jury or can you tell me if you're objecting or
17 stipulating to these documents?

18 **MR. LAFAYETTE:** I'm not sure which ones you have in
19 front of you, Your Honor.

20 **THE COURT:** Well, you submitted something called a
21 Joint Trial Exhibit list. It appears that that was not
22 accurate. And plaintiffs have submitted, back in docket 120,
23 what they called their amended, excuse me, not amended, Updated
24 Exhibit list. That document was not identified as being joint,
25 but it did have columns for stipulations and objections.

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1 What I asked for was a joint, joint exhibit binders with
2 both parties objections so that I could actually rule. What I
3 have instead are the parties have got different copies of the
4 same documents with different numbers, sometimes with
5 objections, sometimes not.

6 **MR. LAFAYETTE:** I think I can help, Your Honor.

7 **THE COURT:** Please.

8 **MR. LAFAYETTE:** Way back, way, way back we prepared
9 initial -- we exchanged document lists between ourselves.
10 After we did that, my office took the laboring oar of making a
11 joint exhibit list, which was filed. We had the pretrial
12 conference, and you then instructed us to -- if there was
13 something more to put it on and send it to you the following
14 week, and that -- and I can't look at the date on it right now,
15 but I know there was a joint exhibit list that was a true joint
16 exhibit list that everybody had signed off on back in the
17 middle of August. That's the one I think should be the
18 operative exhibit list, and joint because that was a joint
19 exhibit list, and that's the one that the binders that we
20 presented to you is based upon.

21 The only thing that that new list that you got on Saturday
22 does is includes those 15 new documents at the end, but
23 otherwise, that is a joint list prepared by both parties.

24 **THE COURT:** All right. And other than the 15
25 documents, does that mean that the defense has raised every

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1 objection in the objection column? You've raised every
2 objection to any document set forth in that chart?

3 **MR. LAFAYETTE:** I think what we did -- I think that
4 was the intent, Your Honor. I just heard I think that was the
5 intent. I think what we did was attempted to capture -- if you
6 look at -- if you just look at the one that's dated 9/12,
7 because that's the one sitting in front of you --

8 **THE COURT:** That's the one sitting in front of me,
9 too.

10 **MR. LAFAYETTE:** If you look at the one page 5, for
11 example, you will see that there's objections that defendant
12 raised at 1E, and then you see where we captured plaintiff's
13 objections at 1F, so that was the intent of that document.
14 That's about all I can say right now.

15 **THE COURT:** All right. And given that intent, that's
16 why I was surprised when you raised an objection here in court
17 that was inconsistent with what you put in writing on Saturday,
18 and that I relied upon as being your position.

19 **MR. LAFAYETTE:** I understand, Your Honor.

20 **THE COURT:** Does plaintiff have objection to any of
21 those documents set forth in document 137, other than what is
22 set forth in the objection column, and there are plaintiff's
23 objections to some of the documents.

24 **MR. SIEGEL:** Is 137 the one that was filed Saturday?

25 **THE COURT:** Correct.

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1 **MR. SIEGEL:** To the extent to which that copies what
2 was in the previous joint exhibit list, except for the addition
3 of the new exhibits, all of our objections are in there.

4 **THE COURT:** And that's what it appears to me. It
5 appears to me that the entries identified as plaintiff's
6 objections are the same as prior, but I wanted to make sure
7 that you viewed it the same way.

8 **MR. SIEGEL:** Yes.

9 **THE COURT:** All right. Then what I need is either for
10 the -- there would be one true joint trial exhibit list and one
11 true joint trial binder or for plaintiffs updated exhibit list,
12 docket 120, to have a cross-reference so that when we have two
13 versions of the same document --

14 **MR. LAFAYETTE:** It --

15 **THE COURT:** Yes.

16 **MR. LAFAYETTE:** All of the documents in plaintiff's
17 original and supplemental exhibit list are in that document
18 that you have in front of you. They're all right there. And
19 for me, it's easier if we do that, because I think we've
20 created binders for the witnesses, for everybody else based
21 upon that, and if we use that, then we're not going to have any
22 confusion here.

23 **THE COURT:** Well, that's putting the burden on the
24 plaintiff when they're putting on their case tomorrow. So I'm
25 already putting a burden on you, and you started to do it

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1 today, Mr. Siegel.

2 **MR. SIEGEL:** We can cross-reference --

3 **THE COURT:** When you bring up Exhibit 15, say this is
4 the same as Defense Exhibit blah, blah, blah.

5 **MR. SIEGEL:** And we did that, frankly, because we were
6 having time problems coordinating the joint list, and we wanted
7 to be sure and meet whatever the Court's deadline was.

8 **THE COURT:** I understand. I just wanted to make sure
9 that we all understand what's in evidence and what's not, and
10 ultimately the jury will understand it.

11 Now, so far they haven't seen a single exhibit, and that's
12 another -- you know, once an exhibit is admitted, you're
13 welcome to show it to them, put it on the screen, give it to
14 them in paper. I think that they will feel a little more
15 included and have better questions and have a better
16 understanding of the evidence if they see some of it. There
17 was a lot of information referenced to them from emails and
18 documents, which, if you're planning to save all of that until
19 the deliberations, I think you collectively might be
20 disappointed in the accuracy of their analysis. But that's for
21 you to -- it's a presentation point that they'll give you
22 feedback on in the end.

23 All right. Any other issues about the evidence?

24 Yes, Mr. Lafayette?

25 **MR. LAFAYETTE:** Not about the evidence, they're about

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1 witnesses.

2 **THE COURT:** All right. What is your request?

3 **MR. LAFAYETTE:** There's one witness we would like to
4 call out of order, and that's Howard Jordan, and that's because
5 he's gone on -- he leaves Thursday, so we want to try to get
6 him in here if we could on Wednesday. That was one.

7 And I think there are two witnesses that plaintiff has
8 that we may need to shuffle around. I know he wanted Fred
9 Blackwell, and I'll just -- I'm not sure if he subpoenaed him
10 or not, but Mr. Siegel called me on Friday and asked if I could
11 get him. I said I will try. He said that in the deposition
12 transcript, the City indicated that it would produce
13 Mr. Blackwell. I have not been able to reach him. Now, I'm
14 just telling you, it's not for lack of trying. I have not been
15 able to reach him. I have called him on multiple numbers, and
16 I cannot reach him, and I just want everyone to realize that
17 that's a problem, and I will continue to try to resolve the
18 problem, but I haven't reached him. That's number one.

19 **THE COURT:** I think that's number two, actually.
20 Howard Jordan was number one.

21 **MR. LAFAYETTE:** That's right. And number 3 is Katano
22 Kasaine. I think plaintiff's counsel wanted her here tomorrow,
23 but she's unavailable until. She can make it Thursday. I just
24 can't get her here on Wednesday. I just have to move her
25 around, and maybe that frees up bringing Howard Jordan in.

PROCEEDINGS

1 He's quick.

2 **THE COURT:** Mr. Siegel, are you done with your
3 examination of Ms. Santana or is it going to continue?

4 **MR. SIEGEL:** It's going to continue.

5 **THE COURT:** And who are you calling next?

6 **MR. SIEGEL:** At Mr. Lafayette's request, we gave him a
7 list last week of who we wanted to call which day, and so we
8 had scheduled for after Ms. Santana Otis McGee, Barbara Parker,
9 Fred Blackwell, Desley Brooks, and in that order. I suppose if
10 Blackwell is not available tomorrow, we could have him another
11 day.

12 Mr. Lafayette is correct, in the -- Mr. Blackwell's
13 deposition reflects that I asked whether he would be available
14 for trial, as Ms. Bee who is present, and Mr. Blackwell both
15 said on the record that he would be, and that was -- you know,
16 what I do with deposition is say, *Look, give me your home*
17 *address, but you don't have to if you just promise to show up*
18 *at trial*, and if the attorney representing the witness says,
19 *We'll produce him*, then I refrain from demanding a home address
20 for subpoena purpose, and that's what I did with Mr. Blackwell
21 and many of the other witnesses.

22 **THE COURT:** All right. Well, I don't know where he is
23 either, so I can't solve the problem for you. But I can say my
24 expectations are that we won't have any dark period tomorrow.
25 We're in trial, and so there needs to be a next plaintiff

PROCEEDINGS

1 witness. If Mr. Blackwell is not here, there's going to be
2 somebody else, and you've got to figure out who it's going to
3 be.

4 Any objection to having Mr. Jordan go out of order
5 Wednesday?

6 **MR. SIEGEL:** No.

7 **THE COURT:** So we'll plan for Howard Jordan to testify
8 on Wednesday at a time to be determined based on -- we'll
9 figure out at the end of the day tomorrow.

10 **MR. SIEGEL:** So if Blackwell is not going to be
11 available tomorrow, then I would ask the City to produce Chief
12 Reed, who is next on our list, and then we will produce Winnie
13 Anderson; can we do that tomorrow, and then we'll deal with it?

14 As I said to Mr. Lafayette last week, if we are moving
15 faster than we thought, or slower, we'll just continue the same
16 order and move people up or back.

17 **THE COURT:** Very well.

18 **MR. SIEGEL:** So we can have Reed and Anderson tomorrow
19 and move Blackwell.

20 **THE COURT:** All right. And Mr. Siegel, anything
21 further for me to resolve today?

22 **MR. SIEGEL:** And you're saying Katano is unavailable
23 until Thursday?

24 **MR. LAFAYETTE:** Until Thursday. And I will check
25 with -- I reserved Chief Reed and Winnie Anderson. Winnie

PROCEEDINGS

1 Anderson is not a City employee. She works for East Bay Mud,
2 so I arranged for them to come in Wednesday.

3 **THE COURT:** You're exceeding my ability to memorize
4 everyone's schedule and fix it. I can't fix it, so keep
5 working on it together.

6 **MR. LAFAYETTE:** We will, Your Honor.

7 **THE COURT:** Make sure there's somebody here waiting in
8 the hallway ready to go. Our jurors are coming from long
9 distances, one from as far away as Santa Rosa, so we need to
10 respect their time. Be here on time tomorrow.

11 I don't anticipate we need to have a need for further
12 evidentiary hearing before court. We resolved things now. I'm
13 expecting another witness here at 9:00, so we'll start promptly
14 at 9:00, and we'll proceed. Thanks very much.

15 (Proceedings adjourned at 4:15 p.m.)

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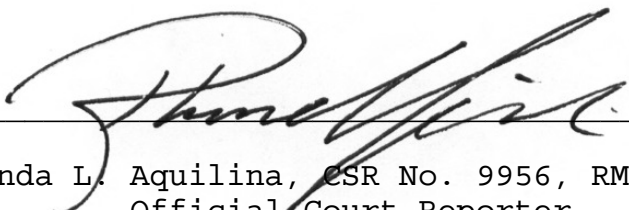
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, September 14, 2015



Rhonda L. Aquilina, CSR No. 9956, RMR, CRR
Official Court Reporter